

IN RE: Petition for Approval of a Statement of Generally Available Terms and Conditions pursuant to §252(f) of the Telecommunications Act of 1996 and Notification of Intention to File a Petition for In-Region InterLATA Authority with the FCC Pursuant to §271 of the Telecommunications Act of 1996.

DOCKET 25835

ORDER

BY THE COMMISSION:

I. Introduction/Background

A. Procedural History

In anticipation of a request by BellSouth Telecommunications, Inc. (“BellSouth”) for In-Region InterLATA authority, the Alabama Public Service Commission (the “Commission”) established this Docket pursuant to Order entered on February 20, 1997. The purpose of the Docket was to allow for the accumulation of the information the Commission deemed necessary to fulfill its consultative responsibilities to the Federal Communications Commission (the “FCC”) pursuant to §271(d)(2)(B) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (“the Act”).¹ A number of important matters have transpired since the Commission initiated this Docket, including numerous FCC orders addressing §271 applications and other issues. The Commission has closely monitored each of those FCC proceedings as well as the decisions by the various federal courts, including the United States Supreme Court, which have impacted the proceedings conducted under Docket 25835. Additionally, this Commission has taken notice of the activities of other state Commissions within BellSouth’s region.

The Commission’s February 20, 1997 Order in this cause required BellSouth to provide the Commission with ninety (90) days advanced notice of its intent to file with

¹ Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §151 *et seq.*

the FCC for In-Region InterLATA authority. In addition, the Commission's February 20, 1997 Order required BellSouth to submit to the Commission information which would support a Track A or Track B filing under §271(c)(1), as well as information which would demonstrate BellSouth's compliance with the competitive checklist established by §271(c)(2)(B).

On June 18, 1997, BellSouth first notified the Commission of its intention to file for In-Region InterLATA authority with the FCC and requested approval of its Statement of Generally Available Terms and Conditions ("SGAT"). The Commission established public hearings to further investigate BellSouth's request for relief. Said hearings commenced on August 18, 1997 and concluded on August 22, 1997. The Commission included in the record of the aforementioned proceedings survey results from the CLEC intervenors which reflected the interconnection experience of those CLECs with BellSouth.

Following an assessment of the record compiled at the aforementioned proceedings, the Commission issued an Order on October 16, 1997 and concluded therein that BellSouth's request for interLATA relief was premature. The Commission recognized that BellSouth had made substantial progress toward meeting the Act's requirements to obtain In-Region, InterLATA authority, but ultimately concluded that BellSouth's petition was not timely due primarily to concerns that the rates proposed in BellSouth's SGAT had not yet been determined to be cost based pursuant to §252(d) of the Act. The Commission also expressed concerns regarding BellSouth's provision of nondiscriminatory access to its Operations Support Systems (OSS). The Commission noted that an unbundled network element ("UNE") cost docket had been established pursuant to Docket 26029 in order to evaluate the appropriateness of the rates proposed by BellSouth. With regard to BellSouth's OSS interfaces, the Commission determined that BellSouth should conduct a live, public demonstration of the electronic interfaces allowing access to its OSS and provide an explanation of any manual interfacing requirements BellSouth currently had in place with regard to its OSS.

As required by the Commission's October 16, 1997 Order, BellSouth provided a live demonstration of its electronic interfaces, along with a further presentation regarding its manual processes, on December 18 – 19, 1997. In a follow-up proceeding

held on December 20, 1997, the Commission considered performance standards recommendations that had been solicited from, and submitted by the parties.

In order to assist the Commission in its continuing efforts to render a determination on BellSouth's SGAT and whether that SGAT complied with the requirements of §271 of the Act, the Commission solicited additional information from BellSouth concerning, among other things, CLEC ordering activities, the status of BellSouth's electronic interfaces to its OSS, physical collocation, dark fiber and other specified items. Hearings concerning the additional information solicited were held on March 10 – 12, 1998. On June 25 – 26, 1998 an informal workshop was conducted to discuss issues including UNE rebundling, contract service arrangement ("CSA") termination clauses, the definition of local traffic, OSS, number portability, local dialing parity, and other issues.

On October 19 – 22, 1998, the Commission again conducted proceedings for the purpose of further developing the record in this cause. As with the prior proceedings conducted in this Docket, BellSouth was required to submit a revised SGAT for the Commission's consideration. BellSouth was also required to submit specific information concerning its checklist compliance generally, its OSS developments and enhancements, information concerning its collocation procedures, information regarding its implementation of permanent number portability, as well as other pertinent information. The CLEC intervenors were also required to submit revised surveys concerning the status of their operations for consideration at the October 19 – 22 proceedings.

Pursuant to a procedural ruling entered on December 11, 1998, the Commission requested comments on the FCC's *Second Louisiana Order*.² The Commission's December 11, 1998 procedural ruling also required BellSouth to begin filing on a monthly basis: an OSS status report; performance measurements for Alabama; a report on the status of BellSouth's implementation of the performance measurements ordered by the Georgia Public Service Commission; a status report on the performance measurements workshops conducted by the Louisiana Public Service Commission; a report on BellSouth's provision of the 14 point checklist items; and a report detailing

BellSouth's collocation activities in Alabama. The Commission's December 11, 1998 procedural ruling further required the CLEC intervenors in this Docket to commence the filing of a monthly interconnection survey. BellSouth and the CLEC intervenors began filing the information required by the Commission's December 11, 1998 procedural ruling in January of 1999.

On September 2, 1999, the Commission issued two orders, the first of which addressed a number of procedural issues regarding the monthly reporting requirements discussed above. The second Order issued by the Commission on September 2, 1999 addressed a request by AT&T Communications of the South Central States, Inc. and TCG MidSouth, Inc. (collectively "AT&T") for the establishment of a new Docket to implement third party testing of BellSouth's OSS. Asserting that its systems were region-wide in nature, BellSouth urged the Commission to rely on the third party testing that was being conducted by the Georgia Public Service Commission to address the issues and concerns raised by AT&T.

The Commission recognized in its September 2, 1999 Order addressing AT&T's request for relief that independent third party testing was vital to the establishment of local competition and a proper evaluation of BellSouth's efforts to obtain In-Region InterLATA authority. The Commission accordingly concluded that any and all issues related to the independent third party testing of BellSouth's OSS should be addressed under Docket 25835. The Commission further concluded that it would monitor the progress and all reported findings from the Georgia third party test, as well as the third party test undertaken by the Florida Public Service Commission, prior to arriving at any conclusions as to whether independent third party testing of BellSouth's OSS in Alabama should be mandated. The Commission noted that if it became apparent that the Georgia and Florida procedures insufficiently addressed an area or areas which the Commission felt should be tested, the Commission would at that time evaluate the merits of mandating such a testing procedure in Alabama. In the interim the Commission instructed BellSouth to submit, beginning in September 1999, monthly reports to the Commission detailing the status of the OSS testing procedures in the jurisdictions of Georgia and Florida. The Commission thus concluded that AT&T's

² *Application by BellSouth Corporation, BellSouth Telecommunications, Inc.; and BellSouth Long Distance, Inc. for Provision of In-Region InterLATA Services in Louisiana*, Memorandum Opinion and Order, 13 FCC Rcd. 20599

request for the establishment of a third party testing process in Alabama should be held in abeyance pending assessment of the third party testing procedures undertaken in Georgia and Florida.

On February 27, 2001, BellSouth filed a Motion for Leave to File Materials in Support of its Petition for In-Region InterLATA authority and to Establish a Procedural Schedule. AT&T and the Southeastern Competitive Carriers Association ("SECCA")³ filed a Motion for Leave to file a Response to BellSouth's Motion on March 5, 2001. SECCA included with its March 5, 2001 Motion a substantive response to the points raised in BellSouth's Motion of February 27, 2001. SECCA generally contended that the recommencement of proceedings in this cause and the procedural schedule proposed by BellSouth were premature and should not be approved. In particular, SECCA maintained that BellSouth's request was premature due to incomplete third party testing in Georgia and Florida, the fact that a determination had not yet been made as to the need for a third party test in Alabama, and because issues associated with performance standards and digital subscriber line had not yet been resolved.

The Commission determined in an Order entered on March 6, 2001, that a comment cycle should be established to offer all interested parties in this cause an opportunity to respond to the proposals submitted by BellSouth. The Commission also afforded BellSouth an opportunity to reply to any and all such comments received by the Commission.

Following consideration of all comments and replies received in response to the Order of March 6, 2001, the Commission issued an Order on April 5, 2001 granting BellSouth's Motion for Leave to File Materials in Support of its Petition for In-Region InterLATA Authority and to Establish a Procedural Schedule for purposes of recommencing the proceedings in this cause. The Commission's April 5, 2001 Order established a Procedural Schedule that included hearings for June 25 – 29, 2001 on all

(1998) (the "*Second Louisiana Order*").

³ SECCA represents that it is a coalition of the following competitive local exchange telecommunications providers, interexchange carriers and other interested entities: AT&T Communications of the South Central States, Inc. ("AT&T"), MCI WorldCom Telecommunications, Inc. and MCI Metro Access Transmission Services, Inc. (collectively, "MCI"), ITC DeltaCom Communications, Inc. ("DeltaCom"), Business Telecom, Inc. ("Business Telecom"), e.spire Communications, Inc. ("e.spire"), ICG Telecom, Inc. ("ICG"), Time-Warner Telecom ("Time –Warner"), Qwest Communications ("Qwest"), XO Communications ("XO"), Actel Integrated Communications, Inc., Association of Communications Enterprises ("ASCENT"), Competitive Telecommunications Association ("CTA"), KMC Telecom ("KMC"), NewSouth Communications ("NewSouth"), TriVergent Communications ("TriVergent"), Access Integrated Networks, Inc. ("Access"), Birch Telecom, Inc. ("Birch"), ConnectSouth Communications, Inc. ("ConnectSouth") and US LEC Corp. ("US LEC"). SECCA further represents that its members who are interexchange carriers and/or

checklist compliance issues other than performance measurements and standards, Georgia third party testing issues, and issues concerning the regionality of BellSouth's OSS. The issues specifically excluded from consideration at the June 25 – 29, 2001 proceedings were scheduled for hearing on July 30 – August 1, 2001. Pursuant to Procedural Order entered on May 2, 2001, however, BellSouth was allowed to proceed with the submission of its direct testimony concerning performance measurements and standards in conjunction with the other evidence it was submitting for the proceedings of June 25 – 29, 2001.

Pursuant to a Procedural Ruling entered on July 13, 2001, the hearing concerning OSS third party testing issues was indefinitely postponed until the Georgia Public Service Commission rendered a determination on the third party testing process undertaken in Georgia. Following the Georgia Commission's approval of BellSouth's §271 application in Georgia, a hearing on the OSS third party testing issues was established for November 27, 2001 pursuant to a Procedural Ruling entered on October 17, 2001.

B. The Party Participants

In addition to BellSouth, the active participants who introduced testimony in the proceedings conducted June 25 – 29, 2001, included AT&T, SECCA, WorldCom, Inc. ("WorldCom"), ITC DeltaCom Communications, Inc. ("ITC DeltaCom"), DIECA Communications, Inc., d/b/a Covad Communications, Company ("Covad"), KMC Telecom, Inc. ("KMC"), and Telecom Consultants, Inc. ("Telecom Consultants"). NewSouth Communications Corp., US LEC of Alabama, Inc. ("US LEC), Sprint Communications Company L.P. ("Sprint"), and the Office of the Attorney General of Alabama (the "AG") were represented at the June 25 – 29, 2001 proceedings through counsel but did not introduce testimony.

In addition to BellSouth, the participants who introduced testimony during the proceedings conducted on July 30 – August 1, 2001 included AT&T, ITC DeltaCom, WorldCom, Covad, and SECCA. KMC, Sprint, and the AG were represented in the July 30 – August 1, 2001 proceedings through counsel but did not introduce testimony.

At the proceeding conducted on November 27, 2001, AT&T, ITC DeltaCom, and WorldCom introduced testimony as did BellSouth. The Attorney General of Alabama was represented at the proceeding through counsel but did not introduce testimony.

At the conclusion of the November 27, 2001 proceeding, the parties were afforded the latitude to submit post hearing briefs in the form of proposed orders. BellSouth, ITC DeltaCom, WorldCom, SECCA, and KMC each submitted individual post hearing briefs/proposed orders. AT&T and Covad submitted a joint post hearing brief/proposed order for consideration by the Commission.

II. Overview of the Act and the FCC's Implementing Regulations and Requirements

A. Administrative Considerations

The Act provides at §271(d)(1) that a Bell Operating Company ("BOC"), or its affiliate, may apply to the FCC at any time after the date of enactment for "authorization to provide interLATA services originating in any In-Region state." In assessing such applications by BOC's, the FCC is required by §271(d)(2)(A) to consult with the Attorney General of the United States and include any comments submitted by the Attorney General in the record of its decision. The FCC is required to give substantial weight to the Attorney General's evaluation, but such evaluation does not have a preclusive effect on the FCC's ultimate determination.

The FCC is further required by §271(d)(2)(B) of the Act to consult with affected state Commission's before making any determination on a BOC application for In-Region interLATA authority. In particular, §271(d)(2)(B) provides as follows:

- (B) Consultation with state Commissions. - - Before making any determination under this subsection, the Commission shall consult with the state Commission of any state that is the subject of the application in order to verify the compliance of the Bell Operating Company with the requirements of subsection (c).

The FCC is required by §271(d)(3) to render its written determination approving or denying the authorization requested in a BOC's application for each state within ninety days of its receipt of such application. The FCC is precluded from approving the authorization requested in a BOC's application unless it finds that the BOC has fully complied with the requirements for providing In-Region interLATA services established by §271(c); determines that the requested authorization will be carried out in accordance with the requirements of §272 and finds that the requested authorization is

consistent with the public interest, convenience and necessity.⁴ The specific requirements of §271(c) are discussed in more detail below.

B. Compliance with the “Track” Requirements established by §§271(c)(1)(A) and/or 271(c)(1)(B)

In order for a BOC to receive FCC approval to provide In-Region interLATA services, the BOC in question must first demonstrate that it satisfies the requirements of either §271(c)(1)(A) (“Track A”) or §271(c)(1)(B) (“Track B”). A BOC meets the requirements of §271(c)(1)(A) if it has:

. . . entered into one or more binding agreements that have been approved under §252 specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service (as defined in §3(47)(A), excluding exchange access) to residential and business subscribers. For the purpose of this subparagraph, such telephone exchange service may be offered by such competing providers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier . . .

Section 271(c)(1)(B) provides that:

A Bell operating company meets the requirements of this subparagraph if, after 10 months after the enactment of the Telecommunications Act of 1996, no such provider has requested the access and interconnection described in subparagraph (A) before the date which is three months before the date the company makes its application under subsection (d)(1), and a statement of the terms and conditions that the company generally offers to provide such access and interconnection has been approved or permitted to take effect by the state commission under §252(f). For purposes of this subparagraph, a Bell operating company shall be considered not to have received any requests for access and interconnection if the state commission of such state certifies that the only provider or providers making such a request have (i) failed to negotiate in good faith as required by §252, or (ii) violated the terms of an agreement approved under §252 by the provider’s failure to comply within a reasonable period of time with the implementation schedule contained in such agreement.

Once a BOC successfully establishes that it has met either Track A or Track B, it must then demonstrate that it is providing access and interconnection pursuant to one or more agreements as described in Track A, or that it is generally offering access and interconnection pursuant to a Statement of Generally Available Terms and Conditions (“SGAT”) as described in Track B. In either case, the access and interconnection provided must meet the competitive checklist requirements of §271(c)(2)(B) as discussed in more detail below.

⁴ See 47 U.S.C. §271 (d)(3)(A) – (C).

C. Compliance with the “Checklist” provisions of §271(c)(2)(B)

In order to comply with the competitive checklist set forth at §271(c)(2)(B), a BOC must demonstrate that it has “fully implemented” said competitive checklist.⁵ In particular, the BOC must demonstrate that it is offering interconnection and access to network elements on a nondiscriminatory basis.⁶

The FCC has, through the various orders it has issued addressing §271 applications, elaborated on the above discussed statutory standards even further. In particular, the FCC has established that for functions which the BOC provides to competing carriers that are analogous to the functions a BOC provides itself in connection with its own retail service offerings, the BOC must provide access to competing carriers in “substantially the same time and manner” as it provides to itself. Thus, where a retail analogue exists, a BOC must provide access that is equal to (i.e. substantially the same as) the level of access that the BOC provides itself, its customers, or its affiliates, in terms of quality, accuracy, and timeliness.⁷ For those functions that have no retail analog, the BOC must demonstrate that the access it provides to competing carriers would offer an efficient carrier “a meaningful opportunity to compete.”⁸ Importantly the FCC does not view the “meaningful opportunity to compete” standard to be a weaker test than the “substantially the same time and manner” standard.

In situations where the BOC provides functions to its competitors that it also provides for itself in connection with its retail service, its actual performance can be measured to determine whether it is providing access to its competitors in “substantially the same time and manner” as it does to itself. Where the BOC, however, does not provide a retail service that is similar to its wholesale service, its actual performance with respect to competitors cannot be measured against how it performs for itself because the BOC does not perform analogous activities for itself. In those situations, the examination of whether the quality of access provided to competitors offers a

⁵ See *Application by SBC Communications, Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance Pursuant to §271 of the Telecommunications Act of 1996 to Provide In-Region InterLATA services in Texas*, 15 FCC Rcd. 18354, 18373-74 (2000) (“SWBT Texas Order”); *Application by Bell Atlantic New York for Authorization Under §271 of the Communications Act to Provide In-Region, InterLATA service in the State of New York*, 15 FCC Rcd. 3953, 3971-72 (1999) (“Bell Atlantic New York Order”); *Application of Ameritech Michigan Pursuant to §271 of the Communications Act of 1934 as amended*, 12 FCC Rcd. 20543, 20559-60 (1997) (“Ameritech Michigan Order”).

⁶ 47 U.S.C. §271(c)(1)(B)(i), (ii).

⁷ *SWBT Texas Order*, 15 FCC Rcd. 18354, ¶¶44; *BA-NY Order*, 15 FCC Rcd. at 3971, ¶¶44; *Ameritech Michigan Order*, 12 FCC Rcd. at 20618-19.

“meaningful opportunity to compete” is intended to be a proxy for whether access is being provided in “substantially the same time and manner” and thus is nondiscriminatory.⁹

D. Compliance with the “SGAT” provisions of §252(f)

Pursuant to §252(f)(1), BOCs are given the latitude to, at any given point in time, prepare and file with a state Commission an SGAT for purposes of delineating the terms and conditions that such company generally offers within that state. If approved or allowed to go into effect by the state Commission with which they are filed, SGATs provide an avenue for Competitive Local Exchange Carriers (CLECs) to expeditiously enter the local market without having to engage in lengthy, burdensome interconnection negotiations with the BOC.

Effective SGATs can also be utilized by BOCs in their efforts to obtain approval to enter the In-Region interLATA market pursuant to Track B of the Act which requires a BOC to demonstrate that an SGAT has been approved or allowed to go into effect in the state for which §271 approval is sought. Effective SGATs may also prove useful to BOCs pursuing In-Region interLATA authority pursuant to Track A of the Act due to the fact BOCs are allowed to rely on effective SGATs to supplement interconnection agreements with CLECs that may not include the entirety of the checklist items of §271(c)(2)(B).¹⁰

State commissions are required to complete their review of properly submitted SGATs not later than 60 days after their filing unless the submitting BOC agrees to an extension of time.¹¹ State commissions are allowed to continue to review SGATs beyond the 60-day time period established by the Act, but must permit the SGAT being reviewed to go into effect following the sixtieth day unless the submitting BOC has agreed to an extension.¹² In rendering its decision, a state commission is precluded from approving an SGAT unless it complies with the requirements of §251 (and the regulations promulgated thereunder) as well as the requirements of §252(d) which

⁸ *Id.*

⁹ *Id.*

⁷ *Evaluation of the United States Department of Justice, In Re: Application of SBC Communications, Inc. et al. pursuant to Section 271 of the Telecommunications Act of 1996 to provide In-Region InterLATA services in the State of Oklahoma*, CC Docket No. 97-121, at 22-24 (filed March 16, 1997).

⁸ 47 U.S.C. §252(f)(3)(A).

⁹ *Id.*

establishes pricing standards for interconnection, unbundled network elements, the transport and termination of traffic and resale.¹³

E. Performance Measures and Enforcement Mechanisms

In assessing various BOC §271 applications from other jurisdictions, the FCC has stated that one factor it may consider as part of its 271(d)(3)(C) public interest determination is whether the BOC in question will continue to satisfy the requirements of §271 after entering the local market.¹⁴ The FCC has indeed stated that the fact that a BOC will be subject to performance monitoring and enforcement mechanisms constitutes probative evidence that the BOC will continue to meet its §271 obligations and that its entry will be consistent with the public interest.¹⁵

Even though it has “strongly encouraged” state performance monitoring and post-entry enforcement, the FCC has made it clear that it does not base its determination of a §271 applicant’s checklist compliance on the existence of performance measurement plans.¹⁶ The FCC has in fact never required BOC applicants to demonstrate that they are subject to performance monitoring/post-entry enforcement mechanisms as a precondition to §271 approval.¹⁷ The FCC has acknowledged, however, that there have been circumstances where the development and institution of performance measurement plans by state Commissions have helped to bring BOCs into checklist compliance.¹⁸

In situations where a BOC relies on performance monitoring and enforcement mechanisms to provide assurance that it will continue to maintain market opening performance after receiving §271 authorization, the FCC has indicated that it will indeed review the mechanisms involved to ensure that they are likely to perform as promised.¹⁹ To that end, the FCC has held in numerous of its 271 Orders that the reliability of the data reported under performance mechanisms is critical and the measures in question

¹³ We note that all matters concerning the pricing of BellSouth’s Interconnection Services and Unbundled Network Elements were reviewed and addressed by the Commission in its May 31, 2002 Order in Docket 27821, Generic Proceeding to Establish Prices for Interconnection Services and Unbundled Network Elements (the “*Generic UNE Docket*”) and thus were not the subject of consideration in this Docket. The treatment of pricing relative to the SGAT is discussed further at Section 111(c) below.

¹⁴ See *Joint application by SBC Communications, Inc., Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, 16 FCC Rcd. 6237, ¶269 (2001) (“*SWBT Kansas/Oklahoma Order*”); *Second Louisiana Order*, 13 FCC Rcd. 20599 at 20866; and *Ameritech Michigan Order*, 12 FCC Rcd. at 2747.

¹⁵ *SWBT Kansas Oklahoma Order* at ¶269; *Second Louisiana Order*, 13 FCC Rcd. at 20806.

¹⁶ *Bell Atlantic New York Order* at footnote 1325 wherein the FCC noted the difference in its approach as compared to DOJ.

¹⁷ *SWBT Kansas/Oklahoma Order* at ¶269.

¹⁸ *SWBT Kansas/Oklahoma Order* at footnote 828.

must generate results that are “meaningful, accurate and reproducible.”²⁰ In particular, the FCC has emphasized that effective performance monitoring and enforcement mechanisms have the following important characteristics:

- Potential liability that provides a meaningful and significant incentive to comply with the designated performance standards;
- Clearly articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier – to – carrier performance;
- A reasonable structure that is designed to detect and sanction poor performance when it occurs;
- A self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and
- Reasonable assurances that the reported data is accurate.²¹

F. The Applicable Evidentiary Standard

The FCC has established that the BOC at all times retains the ultimate burden of proof and must demonstrate that its request for relief pursuant to §271 satisfies all the requirements of §271. The foregoing is true even if no party files comments challenging a BOC’s compliance with a particular requirement.

The evidentiary standards governing review of §271 applications are intended to balance the need for reliable evidence against the recognition that, in such a complex endeavor as a §271 proceeding, no finder of fact can expect proof to an absolute certainty. While a BOC is expected to demonstrate as thoroughly as possible that it satisfies each checklist item, the public interest standard, and the other statutory requirements, the FCC has emphasized that a BOC needs only to prove each element by “a preponderance of the evidence.” “Preponderance of the evidence” means “the greater weight of evidence, evidence which is more convincing than the evidence which is offered in opposition to it.”²²

In adhering to the method of evidentiary analysis established by the FCC, this Commission must first determine whether BellSouth has made a *prima facie* case that it meets the requirements of each particular checklist item. BellSouth must plead, with appropriate supporting evidence, facts, which if true, are sufficient to establish that the requirements of §271 have been met. Once BellSouth has made such a showing, the

¹⁹ Bell Atlantic New York Order at ¶433.

²⁰ SWBT Kansas/Oklahoma Order at ¶278.

²¹ Bell Atlantic New York Order at ¶433.

²² SWBT Texas Order at ¶¶47-48.

intervenors opposing BellSouth's application must produce evidence or arguments to show that the application does not satisfy the requirements of §271 or risk a ruling in BellSouth's favor.²³

When reviewing the arguments raised by the CLEC intervenors who oppose BellSouth's application, the Commission must look for evidence that BellSouth's policies, procedures or capabilities preclude it from satisfying the requirements of a particular checklist item. Mere unsupported evidence in opposition will not suffice. Although anecdotal evidence may be indicative of systemic failures, isolated incidents may not be sufficient for an intervenor to overcome BellSouth's *prima facie* case. Moreover, BellSouth may overcome anecdotal evidence by, for example, providing objective performance data that demonstrate that it satisfies the statutory nondiscrimination requirement.²⁴

To make a *prima facie* case that it is meeting the requirements of a particular checklist item under §271(c)(2)(B), BellSouth must demonstrate that it is providing access or interconnection pursuant to the terms of that checklist item. In particular, BellSouth must demonstrate that it has a "concrete and specific legal obligation" to furnish the item upon request pursuant to Commission-approved interconnection agreements at established prices and other terms and conditions for each checklist item. BellSouth must further demonstrate that it is currently furnishing, or is ready to furnish, the checklist item in quantities that competitors may reasonably demand and at an acceptable level of quality.²⁵

The FCC has recognized that the particular showing required to demonstrate compliance will vary depending on the individual checklist item and the circumstances of the application. The FCC has in fact given BOCs substantial leeway with respect to the evidence they present to satisfy the competitive checklist. Although the FCC's orders have provided guidance on which type of evidence it finds more persuasive, the FCC has stated that "we reiterate that we remain open to approving an application based on other types of evidence if a BOC can persuade us that such evidence

²³ *Id.* at ¶49.

²⁴ *Id.* at ¶50.

²⁵ *Id.* at ¶52.

demonstrates nondiscriminatory treatment and other aspects of the statutory requirements.”²⁶

In past orders, the FCC has encouraged BOCs to provide performance data with their §271 applications to demonstrate that they are providing nondiscriminatory access to unbundled network elements to requesting carriers. The FCC has concluded that the most probative evidence that a BOC is providing nondiscriminatory access is evidence of actual commercial usage. Performance measurements are an especially effective means of providing evidence of the quality and timeliness of the access provided by a BOC to requesting carriers because they provide a “benchmark against which new entrants and regulators can measure performance over time to detect and correct any degradation of service rendered to new entrants.”²⁷ This Commission has given due consideration to the aforementioned guidelines established by the FCC in our consideration of BellSouth’s application.

III. Findings and Conclusions

A. Track A Compliance

1. The Positions of the Parties

(a) The *Prima Facie* Position of BellSouth

BellSouth represents that it has complied with the requirements of Track A and supports said position through testimony that it has negotiated, and had approved by the Commission, approximately 200 interconnection and/or resale agreements for the State of Alabama as of April 2001. As of February 2001, BellSouth represents that the 68 CLECs in Alabama serving more than 10 access lines accounted for the service on more than 175,000 access lines in Alabama. BellSouth’s revised estimates indicate that the 175,000 access lines served by CLECs in Alabama represent 8.1% of the total access lines in BellSouth’s territory in Alabama.²⁸ BellSouth further represents that approximately 70% of the CLEC lines are served using CLEC owned facilities, either exclusively or in combination with BellSouth’s unbundled network elements.²⁹

²⁶ *Id.* at ¶53.

²⁷ See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd. 6237, at ¶275; *SWBT Texas Order*, 15 FCC Rcd. at 18562-63, ¶425; *Bell Atlantic New York Order*, 15 FCC Rcd. at 4169, ¶438.

²⁸ As discussed in more detail below, the 8.1% market share estimate was derived from BellSouth’s Method 1 approach. BellSouth arrived at a CLEC market share of 7.8% using its Method 2 approach.

²⁹ Tr. pp. 80, 100-102 (*Ruscilli*); See also BellSouth Exhibit 89 (the affidavit of Victor K. Wakeling and the exhibits attached thereto as revised 11/16/01).

BellSouth utilized two methodologies in arriving at its estimates of CLEC market share in Alabama. According to BellSouth, both methods generate conservative estimates of the number of CLEC lines served on a facilities basis, but provide actual data concerning resold local access lines due to the fact that such information is available directly from BellSouth's Billing Systems. Under its Method 1 approach, BellSouth identified from various reliable sources, the number of CLEC E911 listings, unbundled network elements, including UNE loops and UNE platforms (UNE-Ps), and interconnection trunks, whenever data were available. The data obtained fell into three categories: (1) the sum of residence and business E911 listings, (2) the total of UNE loops and UNE-Ps (loop/port combinations), and (3) the total number of interconnection trunks. BellSouth asserts that these categories contain sufficient data to provide a reasonable basis to estimate facilities-based CLEC lines in Alabama.³⁰

BellSouth points out, however, that data does not exist for every category for every CLEC due to the fact that CLECs choose a variety of competitive approaches and pursue different mixes of target markets. As a result of these differing facilities-based approaches, data exist in only one category for approximately half of the CLECs competing in BellSouth's territory in Alabama. For example, nine CLECs have data only for UNE-Ps. In such cases, the data from that single category was used for the estimate of lines by BellSouth. BellSouth did not increase its estimate of total lines by adding across data categories although it maintains that it would be reasonable to do so in certain cases. Further, when interconnection trunks were the basis for the estimate of total facilities-based lines, BellSouth maintains that it assumed a very conservative one-to-one trunk ratio.

BellSouth also maintains its estimate with regard to residential facilities-based lines served by CLECs is conservative. As an example, BellSouth notes that several CLECs focus on providing high speed Internet access over digital subscriber line (DSL) using UNE loops. Absent clear indications from the data regarding the number of residential lines for a CLEC, all of a CLECs UNE loops were treated as business lines due to the fact that BellSouth's systems do not identify residence or business UNE loops separately.

³⁰ BellSouth Exhibit 89 at p. 10.

Within the aforementioned conservative approach, BellSouth represents that it first selected the highest total from among the three categories as its estimate of total facilities-based lines for each CLEC. BellSouth maintains that in many cases, no further analysis was necessary to create an estimate because the category itself broke down the CLEC line total by business and residential lines. When the category selected showed only total lines (i.e. unbundled local loops or local interconnection trunks) BellSouth determined the number of business lines by subtracting from the total number of residential lines in service, when available. If no evidence of residential lines for a CLEC were present, all the lines were treated as business. According to BellSouth, this approach acknowledges the fact that CLECs in general target the business market first.³¹

BellSouth's Method 2 analysis is based on just two categories of data – the 911 listings of facilities-based CLECs, and UNE-Ps. BellSouth maintains that because facilities-based carriers are responsible for making entries in the E911 database, and such entries are critical to the purposes served by the maintenance of the database, it is appropriate to assume that an E911 listing represents a facilities-based line.

BellSouth notes, however, that the E911 database does not capture all lines served by competing carriers on a facilities basis. For example, when a facilities-based CLEC provides service over the UNE-P, BellSouth provides switching and maintains the E911 listing just as BellSouth does for resold lines. BellSouth therefore asserts that the number of CLEC UNE-Ps needs to be added to the CLEC 911 listings for a more complete estimate of total lines. In addition, BellSouth asserts that E911 listings understate the number of lines used by many businesses such as when a business uses a PBX and lists only a single number in the database or for in-dial only service. BellSouth, therefore, maintains that an estimate of facilities-based lines for 22 CLECs under its Method 2 analysis is even more conservative than its Method 1 approach.³²

BellSouth specifically cites e.spire Communications; IDS Telecom; Intermedia Communications (ICI); ITC DeltaCom; KMC Telecom; Knology; Lexstar (Empire); and The Other Phone Company (Access One) as carriers in Alabama who have approved interconnection agreements with BellSouth and provide facilities-based service to either

³¹ *Id.*

³² *Id. at p. 9.*

(or both) business and residential customers in Alabama. According to BellSouth, the aforementioned carriers alone serve over 79,000 business lines and over 10,500 residential lines on a facilities basis. Although for purposes of Track A BellSouth relies upon all of the carriers identified in BellSouth Exhibit 89 and its attachments and exhibits, BellSouth maintains that the aforementioned carriers alone establish that BellSouth is providing “access and interconnection” to “unaffiliated competing providers” of facilities-based “telephone exchange service....to residential and business subscribers” and, therefore, meets the requirements of Track A.³³

With regard to the general effectiveness of local competition in Alabama, BellSouth maintains that it has completed over 500 collocation requests in almost 70 wire centers. Through those collocation arrangements, BellSouth maintains that one or more CLECs in Alabama have the capability to serve approximately 78% of BellSouth’s combined residence and business customers in Alabama on a facilities basis, or approximately 1.5 million lines.³⁴ BellSouth thus asserts that CLECs have placed themselves in a position to pursue and serve a significant portion of BellSouth’s most profitable customers and are being particularly successful in attracting customers in the business market. BellSouth maintains that its estimated losses of 21% in the small business market and 11% in the large business market negate any CLEC assertions that the CLEC revised market share estimate of 8.1% is insignificant.³⁵

BellSouth also maintains that it has presented evidence demonstrating that a grant of its 271 application will further stimulate local competition in Alabama. BellSouth points out that both New York and Texas experienced increased local competition following §271 approval. BellSouth maintains that CLECs serve 20% of the total market in New York – more than any other state. In Texas, BellSouth maintains that CLECs now serve 12% of the total market and made a gain of more than 500,000 access lines in the six months following Southwestern Bell’s §271 approval in Texas.³⁶ BellSouth maintains that these levels of competition are much higher than are present in comparable states that have not allowed BOC long distance entry.³⁷

³³ *Id.* at pp. 10-11.

³⁴ *Id.*

³⁵ Tr. pp. 80, 100-04, 187 (*Ruscilli*); BellSouth Exhibit 89 at p. 4.

³⁶ Tr. pp., 2000-01 (*Taylor*).

³⁷ BellSouth Post Hearing Brief at p. 45; *Citing Federal Communications Commission Releases Latest Data on Local Telephone Competition*, ¶2 (May 21, 2001) (News Release) (“*FCC News Release*”), available at <http://www.fcc.gov/Bureaus/CommonCarrier/>.

In light of the foregoing, BellSouth surmises that it has provided “access and interconnection” to “unaffiliated competing providers” of facilities based “telephone exchange service...to residential and business subscribers.” BellSouth further points out that no CLEC has challenged BellSouth’s representations in this regard. Based on the full evidence of robust competition in Alabama’s local exchange market it contends it has submitted, BellSouth urges the Commission to find that the local exchange market in Alabama is irreversibly open to competition and that the Alabama market will experience further competition once BellSouth receives §271 approval.³⁸

(b) The Position of SECCA

While SECCA does not directly challenge BellSouth’s claim of Track A compliance, it does assert that the record compiled in this cause does not support BellSouth’s conclusion that the Alabama local service market is irreversibly open to competition. SECCA maintains that the observed level of competition in Alabama does not support the conclusion that BellSouth provides local service entrants access to its network on terms that are nondiscriminatory and cost based.³⁹

SECCA maintains that the Commission must determine the actual level of competition and the relative vibrancy of the various modes of entry prior to rendering a determination that BellSouth’s Alabama market is irreversibly open to competition. With regard to resale, SECCA disputes BellSouth’s estimates that CLECs utilizing resale mechanisms serve approximately 2.5% of the market in Alabama. In fact, SECCA maintains that BellSouth’s own data reveals that resale is in rapid decline having decreased over 10% between the months of February and March of 2001.⁴⁰ SECCA asserts that this rapid decline, as well as the generally acknowledged economic unattractiveness of resale, offers little encouragement that resale-based local competition has developed (or even can develop) in Alabama at this time.⁴¹

SECCA further maintains that the level of UNE-based competition does not indicate that Alabama’s local exchange market is irreversibly open to competition. According to SECCA, UNE-based entry is the most likely path to bring competitive benefits to the average Alabama residential consumer and/or small business customer.

³⁸ BellSouth Post Hearing Brief at p. 45.

³⁹ SECCA Post Hearing Brief at p. 7; [*Citing* Tr. 2407-2408 (*Gillan*)].

⁴⁰ *Id.* at 8 [*Citing* Tr. p. 2487 (*Gillan*)].

⁴¹ *Id.*

To date, however, SECCA asserts that UNE-based competition in Alabama has failed to make significant headway.⁴² SECCA disputes BellSouth's claim that CLECs using UNEs are serving 2% of the market in Alabama today. SECCA in fact maintains that its market share analysis utilizing a revenue methodology reveals that the level of UNE-based competition in Alabama is significantly lower than that claimed by BellSouth.⁴³

SECCA further maintains that the BellSouth estimates indicating that CLECs serve a full 4% of the market using CLEC owned facilities are significantly over stated. SECCA maintains that if it is true, as BellSouth claims, that between 78,500 and 86,700 lines are served by CLECs over their own facilities, BellSouth should be able to confirm such a sizeable CLEC share by both the number of interconnection trunks between itself and CLECs, as well as the traffic volumes over those circuits as CLEC customers call BellSouth subscribers (and vice versa).⁴⁴ SECCA asserts that BellSouth's own witnesses have recognized that there are only 19,037 trunks between itself and the CLECs which belies BellSouth's claims that it has estimated CLECs lines assuming a one-to-one, line to trunk relationship. SECCA contends that the data actually indicate that BellSouth assumed a line to trunk ratio in excess of five to one.⁴⁵

SECCA's reworked estimate of the level of CLEC-owned facilities-based competition in Alabama using the adjusted number of interconnection trunks between BellSouth and CLECs indicates that the percentage of CLEC facilities-based market share is a miniscule .2% of the market.⁴⁶ SECCA further contends that its adjusted estimates reflect that the combined CLEC facilities-based and UNE-based market share is approximately 3%. SECCA asserts these results are consistent with the most recent analysis by the FCC of CLEC owned facilities-based competition.⁴⁷

SECCA also disputes the argument that BellSouth's entry into the long distance market will be good for Alabama's consumers. SECCA asserts that with long distance margins already low and decreasing because of ferocious competition, whatever benefit may be derived from BellSouth's entry into the long distance market appears slim.⁴⁸

⁴² *Id.*

⁴³ *Id.* [Citing Tr. pp. 2489-2490 (*Gillan*).

⁴⁴ *Id.* [Citing Tr. pp. 2492-2493 (*Gillan*)].

⁴⁵ *Id.*

⁴⁶ *Id.* at p. 9. [Citing Tr. p. 2494 (*Gillan*)].

⁴⁷ *Id.* [Citing Tr. p. 2595 (*Gillan*) as well as the *Local Competition Report: Status as of December 31, 2001*, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, May 2001, Table 6].

⁴⁸ *Id.*

SECCA concludes that evidence of vibrant CLEC competition using methods contemplated by the Act (resale, facilities based, and UNEs) is critical to BellSouth's demonstration of present compliance with the market opening provisions of the Act. For the reasons previously stated, SECCA maintains that BellSouth's data on CLEC market penetration is exaggerated and unreliable. Even if it is assumed that BellSouth's figures are valid, SECCA maintains that none of the percentages of competition that are being quoted by BellSouth in any way demonstrate that healthy competition exists in Alabama. SECCA maintains that a reasonable person cannot conclude that a monopoly incumbent that retains a 96-98% market share has opened its market to competition and that competition flourishes. In short, SECCA contends that BellSouth has not demonstrated to the Commission that the Alabama market is irreversibly open to competition.⁴⁹

(c) The Position of AT&T and Covad⁵⁰

Much like SECCA, AT&T and Covad do not directly contest BellSouth's claim of compliance with Track A. AT&T and Covad do, however, maintain that BellSouth's assertion that its local markets in Alabama are open to competition is contradicted by the facts. AT&T and Covad indeed contend that local competition in Alabama remains nascent in large measure due to the success of BellSouth's obstructing tactics over the past five years.⁵¹

AT&T and Covad maintain that BellSouth greatly exaggerates the level of local competition in Alabama ignoring critical trends and limitations affecting each of the three entry strategies: Resale, UNEs and CLEC facilities. AT&T and Covad contend that resale activity offers little probative value because evidence suggests that it is neither viable nor irreversible and is in fact decreasing in Alabama and around the country. In particular, AT&T and Covad maintain that the data in the record of this proceeding demonstrate that resold lines in Alabama are in a rapid state of decline with the number of resold lines decreasing by as much as 10% in a single month. AT&T and Covad represent that one cause of the decline of resale service in Alabama is the existence of

⁴⁹ *Id. at p. 10.*

⁵⁰ AT&T and Covad submitted a Joint Post Hearing Brief.

⁵¹ AT&T/Covad Post Hearing Brief at p. 8.

BellSouth's "winback" promotions which allow BellSouth to evade its resale obligations through lower prices.⁵²

AT&T and Covad further maintain that the second entry strategy, UNE based competition, has also failed to make any meaningful headway in Alabama. Indeed, they assert that UNE based competition has only achieved a 2% market penetration more than five years after the effective date of the Act.⁵³

AT&T and Covad assert that UNE based competition has failed to develop for a number of reasons. First, the price to lease network elements in Alabama is prohibitively high. Secondly, BellSouth has been very slow to comply with its legal obligation to provide access to network combinations thereby delaying the availability of this important strategy until February of 2000. Thirdly, BellSouth continues to resist granting CLECs nondiscriminatory access to combinations of UNEs, including so called "new combinations" at cost based rates. According to AT&T and Covad, BellSouth's refusal in this regard increases CLEC costs and prevents the innovation which competition was supposed to promote. AT&T and Covad maintain that the effects of BellSouth's high prices, intransigence and threatening behavior have combined to frustrate the development of UNE based competition in Alabama.⁵⁴

With respect to the third strategy, facilities based entry, AT&T and Covad maintain that activity in Alabama has been negligible and exhibits a traffic pattern indicative of competition focused on a select customer segment.⁵⁵ According to AT&T and Covad, the number of interconnection trunks and data showing interconnection usage in Alabama demonstrate an originating CLEC market share for facilities based carriers of less than 3.5%.⁵⁶ Significantly, the directional interconnection usage data also indicate that CLECs were focused almost exclusively on serving customers that receive local calls and most likely, Internet Service Providers.⁵⁷ According to AT&T and COVAD, even if BellSouth's exaggerated estimate of CLEC market share were accurate, a share of 8.5% (BellSouth's initial Method 1 estimate which was subsequently revised to (8.1%) after five years is not indicative of the level of

⁵² *Id.* [Citing Tr. pp. 2487-2488 (Gillan)].

⁵³ *Id.*

⁵⁴ *Id.* at p. 9 [Citing Tr. p. 2490-2491 (Gillan)].

⁵⁵ *Id.* [Citing Tr. p. 2482 (Gillan)].

⁵⁶ *Id.* at p. 10 [Citing Tr. p. 2493 (Gillan)].

⁵⁷ *Id.*

competition that would be expected if CLECs truly enjoyed nondiscriminatory access to the existing network.⁵⁸

AT&T and Covad surmise that the level of competition in Alabama today fails to justify BellSouth's claim that it has opened its markets. AT&T and Covad further contend that the most likely effect of BellSouth's entry into the interLATA market would be for BellSouth to gain even greater dominance in the future. AT&T and Covad assert that unless entrants are assured nondiscriminatory access to the inherited network, only BellSouth will be positioned to offer packages that combine local service with other products broadly across the market.⁵⁹ AT&T and Covad assert that granting BellSouth interLATA authority at this juncture will increase BellSouth market power and position at the very same time that the Act's sole financial incentive to comply with its competition enhancing provisions is removed.⁶⁰

(d) The Position of WorldCom

Much like SECCA, WorldCom does not directly challenge BellSouth's claim of Track A compliance. WorldCom does, however, maintain that contrary to BellSouth's assertions otherwise, the local market in Alabama has not yet been fully opened to competition.⁶¹

WorldCom supports SECCA's arguments that BellSouth has overstated the level of CLEC market penetration in Alabama for both resale service and facilities-based service. WorldCom in fact alleges that the total level of CLEC market penetration in Alabama is approximately 5% (almost half of which is resale) as opposed to BellSouth's revised estimate of 7.8 to 8.1%. WorldCom alleges that the CLEC market penetration for residential service is a mere 3.3%, most of which is resale. WorldCom further contends that only .75% of the residential market is served by CLECs via UNE-P.⁶²

WorldCom also alleges that whatever penetration CLECs have achieved in the business market is in serious jeopardy given the long and growing list of CLEC bankruptcies. According to WorldCom, all three major data CLECs, Northpoint, Rhythms, and Covad, as well as smaller ones such as Connect South and Blue Star,

⁵⁸ *Id.* [Citing Tr. p. 2495 (Gillan)].

⁵⁹ *Id.* [Citing quotes from BellSouth's CEO Dewayne Ackerman predicting that BellSouth would quickly win "in the 25-30% market share range," with a "quick couple of billion" flowing to the bottom line as profit. See "BellSouth remains Confident but Cautious About Growth", Atlanta Journal Constitution, June 3, 2001; Tr. p. 2480 n. 1 (Gillan)].

⁶⁰ *Id.* at p. 10.

⁶¹ WorldCom Post Hearing Brief at pp. 5-8.

⁶² *Id.* [Citing Tr. p. 302 (Ruscilli)].

are in bankruptcy or have been dissolved. WorldCom contends that other CLECs such as ICG, Actel, and e.spire have met with similar fates. WorldCom further represents that many CLECs remain in peril with share prices that have plummeted in the past year. WorldCom thus concludes that all indications are that whatever advances CLECs have made in recent years are at substantial risk of being reversed with their relatively small local market share also likely to diminish.

WorldCom asserts that premature entry by BellSouth into the long distance market would not enhance local competition, but rather would enable BellSouth to sustain its dominant position in the local market and quash whatever nascent local competition has developed thus far. WorldCom asserts that BellSouth would then use that position to monopolize the long distance business.⁶³

WorldCom asserts that with long distance margins already low and decreasing because of ferocious competition, whatever benefit may be derived from BellSouth's entry into the long distance market appears slim. WorldCom in fact asserts that BellSouth's entry into the In-Region long distance market at this juncture would result in consumer detriment.⁶⁴

WorldCom contends that one reason CLECs have been unable to gain a better foothold in Alabama is a lack of forward looking cost based pricing of unbundled network elements offered by BellSouth. WorldCom also asserts that BellSouth's failure to provide nondiscriminatory access to its OSS has been a factor in the low level of competition in Alabama because of the critical nature of BellSouth's OSS to the broad-scale residential local entry. Other reasons cited by WorldCom include: BellSouth's failure to provide new UNE combinations that BellSouth ordinarily combined in its network; BellSouth's failure to provide just and reasonable interconnection to its network; BellSouth's failure to provide nondiscriminatory access to unbundled transport; and BellSouth's failure to meet its reciprocal compensation obligations.⁶⁵

(e) BellSouth's Rebuttal Arguments

BellSouth challenges SECCA witness Gillan's argument that there has been a decrease in the level of resale entry and that this is evidence that competition in Alabama is either stagnating or declining. BellSouth maintains that the alleged drop in

⁶³ *Id.* at p. 7 [*Citing* Tr. p. 2480-2481 (*Gillan*)].

⁶⁴ *Id.* at p. 7-8.

resale activity is in fact overstated by SECCA due to SECCA's comparison of resale data reported by BellSouth for February of 2001, in BellSouth Exhibit 89⁶⁶ with March 2001 resale data presented in the testimony of Mr. Milner.⁶⁷ BellSouth maintains that Mr. Milner's resale data did not include all resale lines in service and, therefore, any comparison with the more complete resale data in BellSouth Exhibit 89 is inaccurate.⁶⁸ BellSouth contends that when all resale lines in service in March 2001 are considered, the decline in resale entry identified by SECCA disappears and the resale volumes in April 2001 remain in excess of 51,000.⁶⁹

Even if SECCA's concerns about falling resale demand are accurate, BellSouth asserts that this would not demonstrate a lack of local competition. BellSouth instead maintains that in order to determine whether a market is irreversibly open to competition, it is necessary to consider the operations of CLECs as a whole and not just one segment of the CLEC industry. BellSouth asserts that it has demonstrated that the number of UNE-P CLEC lines continue to grow in Alabama as does the total number of lines provided by competitive carriers.⁷⁰

BellSouth further argues that a decline in resale activity is to be expected as the competitive market develops. BellSouth contends that resale allows competitors to enter markets quickly and build customer bases with minimal investment. In the long run, however, resale entry is not as profitable as other forms of entry because it prevents companies from differentiating their products or adding their own innovative features.⁷¹ BellSouth surmises that it is only logical to assume that as the competitive market matures, the demand for transitional measures such as resale will decline. In any event, BellSouth points out that §271 does not guarantee any entrant business success, only an opportunity to compete.⁷²

BellSouth also dismisses the claims of SECCA and the other CLECs that BellSouth's conduct is to blame for the financial problems encountered by the CLEC

⁶⁵ *Id.* at p. 8.

⁶⁶ The Wakeling Affidavit.

⁶⁷ BellSouth Post Hearing Brief at p. 43; [Citing Tr. p. 2487 (*Gillan*)].

⁶⁸ *Id.* [Citing Tr. p. 185 (*Ruscilli*)].

⁶⁹ *Id.*

⁷⁰ *Id.* [Citing Tr. pp. 103-104, 185-187 (*Ruscilli*)].

⁷¹ *Id.* [Citing Tr. p. 2004 (*Taylor*)].

⁷² *Id.* [Citing *Application of Verizon Pennsylvania, Inc., et al., for Authorization to Provide In-Region InterLATA Services in Pennsylvania*, 16 FCC Rcd., 17419, ¶126 (Rel. September 19, 2001) ("Verizon-PA Order").]

community.⁷³ BellSouth asserts that other factors have affected CLECs nationwide such as a cyclical downturn in the economy, the tightening of capital markets, and efforts to compete against subsidized retail market rates. BellSouth further asserts that the mere fact that numerous CLECs have filed for bankruptcy does not mean that those CLECs will be discontinuing their competitive activities in Alabama. BellSouth contends that bankruptcy is often only a temporary solution to deal with debt and actually facilitates the reemergence of a CLEC as a stronger competitor.⁷⁴ BellSouth further maintains that some CLECs, such as long distance carriers, have strategic reasons to defer competitive local entry in an attempt to delay BOC entry into the long distance market.⁷⁵

With regard to SECCA's challenges to its estimates of facilities based competition in Alabama which are supported by the other CLEC intervenors, BellSouth maintains that SECCA provides no actual data to rebut BellSouth's claims and notes that SECCA does not challenge its Method 2 market share analysis.⁷⁶ In reworking BellSouth's Method 1 market share analysis, BellSouth contends that SECCA witness Gillan disregarded the total interconnection trunk quantity provided with the Method 1 estimate and adopted a partial trunk count provided by Mr. Milner. BellSouth asserts that Mr. Milner's trunk count reflects only CLEC-to-BellSouth interconnection trunks and not the total volume of trunks passing traffic in both directions between BellSouth and CLEC networks.⁷⁷

2. The Determination of the Commission

In order to qualify for Track A, BellSouth must demonstrate that it has interconnection agreements with one or more competing providers of "telephone exchange service...to residential and business subscribers."⁷⁸ The Act states that "such telephone service may be offered...by such competing providers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the

⁷³ *Id.* at p. 44; [Citing Tr. pp. 2480, 2490-91, 2508 (Gillan)].

⁷⁴ *Id.* p. 44; [Citing Tr. pp. 1997-2000 (Taylor)].

⁷⁵ *Id.*

⁷⁶ *Id.* at p. 44; [Citing Tr. p. 181 (Ruscilli)].

⁷⁷ *Id.*

⁷⁸ 47 U.S.C. §271(C)(1)(a).

telecommunications services of another carrier.”⁷⁹ The FCC concluded in the *Ameritech Michigan Order* that §271(c)(1)(A) is satisfied if one or more competing providers collectively serve residential and business subscribers.⁸⁰

BellSouth supports its contention that it has complied with the requirements of Track A with testimony that it has, as of April, 2001, successfully negotiated or arbitrated approximately 200 interconnection agreements with certified CLECs in Alabama which have been approved by this Commission.⁸¹ BellSouth represents that as of February 2001, 68 CLECs in Alabama are each serving 10 or more local lines in BellSouth’s service area in the state. Overall, BellSouth estimates that these 68 competing carriers provide local service to some 177,531 lines, or approximately 8.1% of the total lines in BellSouth’s service territory.⁸²

BellSouth’s Method 1 market share analysis includes aggregate line totals for 27 carriers in Alabama that BellSouth maintains are competing on a facilities basis. According to BellSouth, approximately 71% of the total of 177,531 lines are served by CLECs using their own facilities, either exclusively or in combination with BellSouth UNEs and/or UNE-Ps. BellSouth represents that 10,969 of those facilities-based lines served residential customers with the remainder serving business customers.

BellSouth further maintains that as of February, 2001, 41 resale-only CLECs (each serving at least 10 lines) were providing a total of 37,138 access lines in BellSouth’s Alabama service territory. BellSouth represents that 35,697 of those lines were residential while 1,441 were business.⁸³ BellSouth thus asserts that pursuant to its Method 1 analysis, facilities-based and resale CLECs in Alabama serve 8.1% of the local access lines in Alabama.⁸⁴

BellSouth maintains that under its Method 2 market share analysis, 22 facilities-based CLECs are serving 119,677 facilities-based lines, as well as 12,529 resold lines. When the 37,138 lines from 41 resale only CLECs are included, BellSouth estimates

⁷⁹ *Id.*

⁸⁰ *SWBT Kansas/Oklahoma Order* at ¶40, *Ameritech-Michigan Order* at ¶85 and *Second Louisiana Order* at ¶¶46-48.

⁸¹ Tr. p. 100 (*Ruscilli*).

⁸² BellSouth Exhibit 89 as revised November 16, 2001 by virtue of the Supplemental Wakeling Affidavit.

⁸³ *Id.*

⁸⁴ *Id.*

that the overall total of CLEC lines becomes 169,344 or 7.8% of the local access lines in BellSouth's service territory in Alabama.⁸⁵

BellSouth asserts that e.spire Communications; IDS Telecom; Intermedia Communications (ICI); ITC DeltaCom; KMC Telecom; Knology, Lexstar (Empire); and The Other Phone Company (Access One) each have approved interconnection agreements with BellSouth in Alabama and provide facilities-based service to either (or both) business and residential customers in the state. Although BellSouth relies upon all the carriers identified in BellSouth Exhibit 89 and the attachments thereto for its claims of Track A compliance, BellSouth maintains that the carriers cited above alone serve over 79,000 business lines and over 10,500 residential lines on a facilities basis. BellSouth thus maintains that it has established that it is providing "access and interconnection" to "unaffiliated competing providers" of facilities-based "telephone exchange service...to residential and business subscribers."⁸⁶ BellSouth in fact claims that it is experiencing facilities-based competition of levels equal to or greater than the levels reported by other BOCs which have already obtained approval to provide In-Region interLATA service from the FCC.⁸⁷

On cross-examination, Mr. Ruscilli of BellSouth conceded that a relatively small number of CLECs provide almost 80% of the facilities-based competition in Alabama.⁸⁸ He in fact agreed that based on the data available, it appeared that only approximately 10% of the CLECs with which BellSouth had entered interconnection agreements were providing facilities-based service.⁸⁹ Mr. Ruscilli also expressed uncertainty regarding the specific number of CLECs in Alabama who have interconnection agreements with BellSouth, but are no longer in business.⁹⁰

Despite the questions raised concerning BellSouth's Method 1 market share analysis by SECCA and the other CLEC intervenors, and the demonstration that a relatively small number of CLECs are providing facilities-based competition in Alabama, it appears that BellSouth has satisfactorily demonstrated that it complies with the requirements of Track A. BellSouth's unchallenged Method 2 market share analysis

⁸⁵ BellSouth Exhibit 89 at p. 10.

⁸⁶ *Id.* p. 11.

⁸⁷ Tr. p. 101 (*Ruscilli*).

⁸⁸ Tr. p. 238 (*Ruscilli*).

⁸⁹ Tr. p. 239 (*Ruscilli*).

⁹⁰ Tr. p. 238 (*Ruscilli*).

reflects that some 22 facilities-based CLECs in Alabama serve over 11,000 residential customers and over 108,000 business customers using either UNEs, their own facilities or a combination of both.⁹¹ Although there is some question about the viability of certain of the CLECs specifically relied upon by BellSouth in support of its claim of Track A compliance,⁹² BellSouth has satisfactorily demonstrated that those CLECs which have remained viable such as the intervenors, KMC and ITC DeltaCom⁹³ are in the aggregate providing facilities-based service at a level which offers the consumers of Alabama an “actual commercial alternative” to BellSouth.⁹⁴ We thus find that BellSouth has satisfied Track A.

IT IS SO ORDERED BY THE COMMISSION.

B. Checklist Compliance

1. BellSouth’s Interim SQM and Proposed Permanent SQM

(a) Overview

As noted previously, a BOC must establish that it has “fully implemented” the competitive checklist established by §271(c)(2)(B) in order to obtain §271 approval.⁹⁵ In particular, the BOC must demonstrate that it is offering interconnection and access to network elements on a nondiscriminatory basis.⁹⁶ The most probative evidence that a BOC is providing nondiscriminatory access is evidence of actual commercial usage.⁹⁷ However, performance measurements represent an “especially effective means” of providing evidence of the quality and timeliness of the access provided by a BOC to requesting carriers.⁹⁸

In this proceeding, BellSouth asserts that its Interim Service Quality Measurements (SQM) should be utilized to supplement and confirm its evidence of actual commercial usage, particularly in situations where transaction volumes are low. BellSouth maintains that its Interim SQM is the most appropriate way to assess BellSouth’s performance in provisioning checklist items, at least until a permanent

⁹¹ Tr. p. 184 (*Ruscilli*).

⁹² BellSouth Exhibit 89 at p. 10.

⁹³ Tr. pp. 233-241 (*Ruscilli*).

⁹⁴ *SWBT Kansas/Oklahoma Order* at ¶42 citing *Application by SBC Communications, Inc., Pursuant to §271 of the Communications Act of 1934, As Amended, to Provide In-Region, InterLATA Services in Oklahoma*, 12 FCC Rcd. at 8695, ¶14 (June 26, 1997) (construing §271(c)(1)(A) as requiring that “there must be an actual commercial alternative to the BOC in order to satisfy Track A”). This interpretation of Track A was upheld in *SBC Communications, Inc. v. FCC*, 138 F.3d 410, 416-17 (D.C. Cir. 1998).

⁹⁵ See footnote 2 *Supra*.

⁹⁶ See footnote 3 *Supra*.

⁹⁷ *SWBT Texas Order* ¶53.

⁹⁸ *Id.*

performance measurement document is ordered by the Commission. BellSouth proposes a Permanent SQM for purposes of monitoring its performance following its §271 approval. BellSouth's position regarding its Interim and Proposed Permanent SQMs is challenged by the CLEC intervenors on a number of grounds. The arguments of BellSouth in support of its Interim and Permanent SQMs and the opposing views of the CLEC intervenors concerning same are set forth below.

(b) The Positions of the parties

(i) The *Prima Facie* Position of BellSouth

BellSouth maintains that its Interim SQM provides a mechanism to collect performance data on the processes that must be measured to support its application for In-Region InterLATA authority in Alabama with the FCC.⁹⁹ BellSouth maintains that its Interim SQM was developed in cooperation with the Georgia Public Service Commission and participating CLECs throughout BellSouth's nine state region and represents a comprehensive set of performance measures.¹⁰⁰ BellSouth asserts that its Interim SQM sufficiently defines the specific requirements with which the reported performance data must comport.¹⁰¹

BellSouth notes that there are a total of 11 measurement categories in its Interim SQM including Operations Support Systems/Pre-Ordering, Ordering, Provisioning, Maintenance and Repair, Billing, E911, Operator Services/Directory Assistance, Database Update Information, Trunk Group Performance, Collocation and Change Management. There are a total of 75 measurements or subparts in the Interim SQM which fall under one of the 11 aforementioned measurement categories.¹⁰² Each of the aforementioned measures are disaggregated into a multitude of subparts or submetrics, where performance data is actually captured.¹⁰³

To facilitate comparison to BellSouth's performance for its retail customers, approximately 700 submetrics quantifying BellSouth's performance for its retail customers are produced. There is a difference in the number of submetrics for BellSouth, when compared to approximately 1,800 for the CLECs, because some of the

⁹⁹ Tr. p. 2067 (*Varner*).

¹⁰⁰ Tr. p. 2064 (*Varner*); BellSouth represents that it utilized the SQM format required by the Georgia Public Service Commission pursuant to Order entered on June 12, 2001 in Docket 7892-U. The Interim SQM was introduced into evidence as BellSouth Exhibit 275.

¹⁰¹ Tr. p. 2065 (*Varner*).

¹⁰² Tr. p. 2065, 2070 (*Varner*).

¹⁰³ Tr. p. 2066 (*Varner*).

CLEC submetrics are recorded for diagnostic purposes only and also because some of the CLEC submetrics are compared against “benchmarks” as opposed to BellSouth “analogs”. An “analog” is used when BellSouth provides a comparable service to its own retail customers. When no such comparable service exists, a “benchmark” is used instead of an “analog”. A benchmark merely represents an established target for performance. The submetrics that are recorded for “diagnostic purposes only” have no benchmark or analog but are merely provided as an analytical tool.¹⁰⁴

There are also three appendices to BellSouth’s Interim SQM identified as A-C. Appendix A, Reporting Scope, provides service groupings by categories (i.e. service order activity type, pre-ordering query type, maintenance query type, etc.). Appendix B, Glossary of Acronyms and Terms, is just that, a glossary that provides definitions for the most commonly used acronyms and terms found throughout the document. Finally, Appendix C, BellSouth Audit Policy, sets forth BellSouth’s audit policy for both internal and external audits of performance measurements.¹⁰⁵

BellSouth maintains that the Interim SQM’s format for data presentation is similar to that used by Verizon to support its successful interLATA application in New York. BellSouth notes that said format was found acceptable by the FCC and the Department of Justice. BellSouth thus refers to the presentation of data according to its Interim SQM as the “FCC format.”

BellSouth requests that the Commission adopt the FCC format and the underlying Interim SQM for purposes of its 271 decision and for any recommendation the Commission makes to the FCC. BellSouth recommends that the interim SQM remain effective until such time as the Commission has implemented an order establishing a Permanent SQM.¹⁰⁶

BellSouth asserts that it would not be practical to await the development of a permanent measurement plan for Alabama for purposes of evaluating BellSouth’s entry in the interLATA market. BellSouth maintains that to wait on the adoption of such a permanent performance plan would unnecessarily delay the benefits of additional interLATA and local competition to the consumers in Alabama and would thus be contrary to the public interest. BellSouth urges the Commission to rely on the interim

¹⁰⁴ Tr. p. 2066-2067 (*Varner*).

¹⁰⁵ Tr. p. 2070 (*Varner*).

SQM and the data collected pursuant to that SQM to assess BellSouth's compliance with the competitive checklist because it provides the Commission with the ability to thoroughly assess BellSouth's provision of nondiscriminatory access.¹⁰⁷

As noted above, BellSouth indeed recommends that the Commission establish a permanent performance measurement plan. BellSouth emphasizes, however, that it typically takes at least six months to develop the programming for a set of measurements after an order is issued and another six weeks before data is available pursuant to the ordered set of measurements. Therefore, while BellSouth recognizes that the Commission should establish performance measures concurrent with its assessment of BellSouth's §271 compliance, BellSouth maintains that the Commission should rely on the Interim SQM for purposes of reviewing BellSouth's §271 performance as expeditiously as possible.¹⁰⁸ BellSouth contends that when developed, the Permanent SQM should be relied upon by the Commission to assess BellSouth performance on a going forward basis.¹⁰⁹

BellSouth in fact proposes a Permanent SQM in which the data will be provided in a much easier to use form than that provided in the Interim SQM. BellSouth asserts that the main drawback to the Interim SQM is that it provides data in a far too disaggregated and detailed fashion. BellSouth's proposed Permanent SQM contains approximately 1,200 submetrics while the interim SQM contains approximately 1,800 submetrics. Aside from three out of 75 measurements that are excluded from the Permanent SQM, all of the same transactions are reflected in both SQMs. BellSouth maintains that the Permanent SQM will thus provide data in a much more usable grouping while not detracting from the Commission's ability to monitor performance. BellSouth categorizes the major differences between the Permanent and Interim SQMs into four categories. (1) differences in measurements reflected; (2) differences in the levels of product disaggregation; (3) differences in retail analogs/benchmarks; and (4) differences in measurements included in the Self Effectuating Enforcement Mechanism (SEEM).¹¹⁰

¹⁰⁶ Tr. p. 2069 (*Varner*).

¹⁰⁷ Tr. p. 2074-2075 (*Varner*).

¹⁰⁸ *Id.*

¹⁰⁹ BellSouth Exhibit 276.

¹¹⁰ Tr. p. 2079 (*Varner*).

Although BellSouth concedes that its proposed Permanent SQM contains less disaggregation than its Interim SQM, BellSouth nonetheless maintains that its Permanent SQM is more than adequate to allow the Commission to monitor BellSouth's future performance. BellSouth contends that its proposed Permanent SQM provides more than a sufficient number of submetrics to detect any nondiscriminatory treatment and maintains that further disaggregation will result in tremendous amounts of additional data with no appreciable value.¹¹¹ BellSouth asserts that the CLECs can further disaggregate data as provided by BellSouth if they are not satisfied with the disaggregation that BellSouth provides.¹¹²

Even though it provides less disaggregation than BellSouth's Interim SQM, BellSouth cautions that its proposed Permanent SQM may already be too large for the Commission to use effectively. In evaluating the adequacy of BellSouth's proposed Permanent SQM, BellSouth encourages the Commission to assess it relative to the purposes for which it is being created. In particular, BellSouth contends that the Permanent SQM should be sized, in terms of its scope of complexity, to permit the Commission to analyze the data for determining compliance with the Act. The key point is that too much data renders the report useless for the Commission's intended purposes.¹¹³ BellSouth maintains that the thousands and thousands of additional submetrics proposed by the CLECs will paralyze the process and make the entire issue of service quality measurements unworkable.¹¹⁴

With regard to the review of its proposed Permanent SQM, BellSouth indicates that it will participate in six month review cycles beginning six months after the date the Commission Order establishing a Permanent SQM is implemented by BellSouth. BellSouth suggests that a collaborative workgroup to include BellSouth, interested CLECs and the Commission should review the SQM for any desired additions, needed deletions or other modifications. After the initial two year period, BellSouth recommends that the review cycle be, at the discretion of the Commission, reduced to an annual review.¹¹⁵

¹¹¹ Tr. p. 2085 (*Varner*).

¹¹² *Id.*

¹¹³ Tr. p. 2086-2087 (*Varner*).

¹¹⁴ *Id.*

¹¹⁵ Tr. p. 2100 (*Varner*).

BellSouth stresses that the review process should not be the exclusive means to address changes in the SQM. BellSouth recognizes that it can be ordered by the Commission from time to time to modify or amend the SQM or its enforcement measures if experience indicates that a change is needed. BellSouth recognizes that nothing will preclude any party from participating in any proceeding involving BellSouth's SQM or enforcement measures or from advocating that those measures be modified.

Within reason, BellSouth recognizes that there should be periodic third party audits of the SQM data and the reports generated therefrom. BellSouth maintains, however, that since its measurement data is produced by a regional system and managed by the same regional organization, audits of its system should, to the extent possible, be conducted regionally.

BellSouth represents that as reflected in Appendix C of its proposed Permanent SQM, BellSouth will, if requested by a Public Service Commission or a CLEC exercising contractual audit rights, agree to undergo a comprehensive independent third party audit of the current year aggregate level of performance for both BellSouth and the CLEC(s) for each of the next five years (2001-2005).¹¹⁶

BellSouth proposes that the cost of such audits be "born 50% by BellSouth and 50% by the CLECs" because the auditing process benefits the CLECs.¹¹⁷ BellSouth recommends that the selection of an auditor include input from BellSouth, the CLEC(s) and the Commission, where applicable.¹¹⁸ BellSouth similarly recommends that the scope of such auditing activity be determined by BellSouth, the CLECs, and the Commission.¹¹⁹

BellSouth maintains, however, that CLECs should not have the right to audit or request a review by BellSouth for purposes of validating the data collected or reported for selected measures. BellSouth maintains that the CLECs can utilize the raw data provided by BellSouth to themselves validate the results of the BellSouth SQM reports posted every month on the BellSouth web site. BellSouth contends that the

¹¹⁶ Tr. p. 2101 (*Varner*).

¹¹⁷ Tr. p. 2102 (*Varner*).

¹¹⁸ *Id.*

¹¹⁹ Tr. p. 2101 (*Varner*).

augmentation of this process by the annual audit should render such requests unnecessary.¹²⁰

BellSouth asserts that the data which is reflected in its SQMs is collected and processed pursuant to BellSouth's Performance Measurement Analysis Platform ("PMAP") which is recognized as a leading data collection and reporting system.¹²¹ BellSouth maintains that it has made a tremendous commitment to PMAP which requires in excess of 200 full time personnel to develop, maintain and test.¹²²

PMAP is currently being updated to generate performance reports based on the SQM adopted in Georgia which defines the Interim SQM. These reports are available to CLECs across BellSouth's region. PMAP is also used to maintain the raw data files used to generate those reports. Reports are produced on a CLEC specific and CLEC aggregate basis for each BellSouth state and on a regional basis with applicable information concerning BellSouth's retail performance. The raw data maintained in PMAP is CLEC specific and allows each CLEC to drill down to the individual service order or the individual trouble ticket. Each CLEC can download its data file and create a spreadsheet to assess its performance data.¹²³

BellSouth notes that its requirement to produce and publish "raw data" originates from the December 1997 Georgia Public Service Commission Order in Docket 7892-U, *In Re: Performance Measurements for Telecommunications Interconnection, Unbundling and Resale*. In that order, the Georgia Public Service Commission required BellSouth to "provide access to the available data (i.e. data warehouse) and information necessary for a carrier receiving performance monitoring reports to verify the accuracy of such reports." BellSouth points out that the provision of raw data is not a requirement under the Telecom Act although BellSouth has elected to provide raw data in each state.

Raw data refers to the data that underlies the calculation of performance results in the SQM. The SQM identifies the specific calculations that produce each measurement. The raw data is comprised of the individual records that support those calculations. BellSouth maintains it is the only company that provides such data to

¹²⁰ Tr. p. 2103 (Varner).

¹²¹ Tr. p. 2088-2089 (Varner).

¹²² Tr. p. 2089 (Varner).

¹²³ Tr. p. 2091 (Varner).

CLECs and indicates that Verizon and SBC obtained In-Region interLATA authority from the FCC without providing the equivalent of raw data to the CLECs in their respective regions.

BellSouth maintains raw data simply provides more detailed information to the CLECs and was not intended to be sufficient to audit the SQM as the CLECs have attempted to do. BellSouth maintains that that function is intended to be accomplished through the annual audits included in the SQM. BellSouth represents that raw data was never intended to be utilized to identify all of the data that was excluded from the source system data that underlies the measurements in the SQM. BellSouth in fact maintains that much of the data that is excluded from the raw data it compiles is information that is irrelevant to performance results.¹²⁴

In accordance with the Georgia Public Service Commission's directive, BellSouth represents that it designed the PMAP platform to produce raw data files containing the detailed CLEC-specific transaction information underlying each SQM report. Raw data is provided for each state and BellSouth makes this information available to CLECs via its PMAP web site and has been doing so for years. BellSouth points out that there has never been a formal dispute raised regarding the PMAP data despite the fact that there is a formal Dispute Resolution Process in place.¹²⁵

BellSouth concludes that the raw data it provides to CLECs is sufficient to allow those CLECs to validate the published SQM results and create customized management and performance reports. In order to assist the CLECs in downloading, interpreting and using the raw data, BellSouth publishes a Raw Data Users Manual and posts this document to the PMAP web site.¹²⁶

Despite CLEC contentions to the contrary, BellSouth maintains that the data it compiles prior to an application of business rules and exclusions which is known as "early stage" data, is neither relevant or necessary to validate SQM reports. BellSouth thus does not provide early stage data. BellSouth, in fact, maintains that such data is nearly impossible for CLECs to use because of its cumbersome size. BellSouth further argues that disclosure of early stage data which has not been subjected to business rules and exclusions may jeopardize the confidentiality of each CLECs data because it

¹²⁴ Tr. p. 2145-2146 (*Varner*).

¹²⁵ *Id.*

cannot be filtered as CLEC specific. BellSouth argues that the raw data it currently provides to CLECs contains all transaction-level details that aggregate to the values in the SQM reports. BellSouth thus maintains that the CLECs have all the information required to replicate the SQM reports from the raw data by reconciling their transactions to the SQM values and comparing those transactions to the raw data transactions.¹²⁷

(ii) The Position of AT&T and Covad

AT&T and Covad stress that performance measures provide an important way to evaluate the level of service that ILECs such as BellSouth provide to CLECs. In order to obtain an accurate picture of BellSouth's performance in Alabama and to ensure that BellSouth is meeting its obligations under the Act, AT&T and Covad contend that the Commission should adopt its own performance measurements plan and then make a §271 recommendation based upon BellSouth's compliance with that plan.¹²⁸

AT&T and Covad urge the Commission to reject BellSouth's proposal to utilize its Interim SQM for §271 compliance purposes because said SQM does not comport with the SQM approved by the Georgia Commission as represented by BellSouth. As a result of unilateral changes made by BellSouth, AT&T and Covad represent that the Interim SQM submitted by BellSouth lack several metrics that are vital to a proper evaluation of BellSouth's performance.¹²⁹

AT&T and Covad assert that in developing its proposed Interim SQM, BellSouth's unilateral changes to the Georgia SQM benefited BellSouth and worked to the detriment of the CLECs. In particular, AT&T and Covad site BellSouth's exclusion of directory listing order data from certain measures; BellSouth's modification of its Missed Appointment measure to include only an initial missed appointment and not subsequent missed appointments; BellSouth's exclusion of certain orders from the Jeopardy Notice interval measure; BellSouth's exclusion of rural orders from the Held Order Interval measure; and BellSouth's decision to make changes to the measures calculating the total number of disconnect orders so as to increase the appearance of timeliness.¹³⁰

AT&T and Covad maintain that these inappropriate, unilateral exclusions have the

¹²⁶ Tr. p. 2147 (*Varner*).

¹²⁷ Tr. p. 2148-2149 (*Varner*).

¹²⁸ AT&T/Covad Post Hearing Brief at p. 78.

¹²⁹ *Id.*

potential to obscure BellSouth's actual performance and to hide deficient performance. AT&T and Covad contend that performance reporting that is not based on the entire set of data is virtually meaningless and is not useful to the Commission in monitoring BellSouth's performance.¹³¹

AT&T and Covad also maintain that BellSouth has unilaterally, and without notice, excluded data that should be used to calculate the CLEC requested measures that the Georgia Public Service Commission ordered BellSouth to incorporate into its SQM. Specifically, AT&T and Covad maintain that BellSouth excluded non-business hours from the interval calculation for partially mechanized Local Service Requests ("LSRs") for both the Firm Order Confirmation ("FOC") Timeliness Measure and the Reject Interval Measure. AT&T and Covad argue that these critical measures reveal delays in processing orders and the unilateral change in calculation has shown an artificial improvement in BellSouth's performance data.¹³² According to AT&T and Covad, a partially mechanized LSR submitted on a Monday at 1:00 P.M. should result in the CLEC receiving a FOC no later than 7:00 A.M. the next morning under the Georgia Public Service Commission's Order. With BellSouth's unauthorized exclusion, however, BellSouth would still be compliant if it returned the FOC by 11:00 A.M. on Wednesday, almost one and a half days later.¹³³

AT&T and Covad further maintain that BellSouth excluded non-mechanized orders from the FOC and Reject Response Completeness measure thus providing CLECs and the Alabama Commission with an incomplete picture of BellSouth's performance in this area.¹³⁴ In addition, AT&T and Covad maintain that BellSouth excluded data from other important timeliness measures by: unilaterally deciding to exclude data relating to its timeliness in providing database updates when the data related to expedited orders; unilaterally modifying the Timeliness of Change Management Notices measure which represents the amount of advance notice received by CLECs for making critical and time consuming software changes; and by excluding

¹³⁰ *Id.* at p. 79 [Citing Tr. pp. 5227 and 5230 (*Varner* – admitting BellSouth does not report performance for directory listing orders); Tr. p. 5231 (*Varner* – appointments missed after the initial appointment are excluded from missed appointment measure); Tr. pp. 5234 and 5237-5238 (*Varner* – non-dispatch orders excluded from the jeopardy notice interval); Tr. p. 5238-5242 (*Varner* – exclusion of rural orders)].

¹³¹ *Id.*

¹³² Tr. p. 4685-4686 (*Bursh*).

¹³³ *Id.*

¹³⁴ Tr. at pp. 4685-4686 (*Bursh*).

changes BellSouth deems to be outside of its control without defining that term or seeking Commission approval for the change.¹³⁵

AT&T and Covad further allege that BellSouth failed to comply with the April 2001 SQM adopted by the Georgia Public Service Commission. As an example, AT&T and Covad maintain that BellSouth modified the Georgia Public Service Commission's Reject Interval Measure by excluding data on LSRs which BellSouth defines as "projects." According to AT&T and Covad, the term projects can, pursuant to the definition of said term in BellSouth's Project Manager Guidelines, include orders with as few as five DS1 lines and as few as 20 lines for even simple orders.¹³⁶

AT&T and Covad also maintain that BellSouth altered the disaggregation for the Cooperative Acceptance Testing measure such that the performance is not reported on a statewide basis.¹³⁷ AT&T and Covad assert that this unauthorized change could allow BellSouth to mask its true performance by aggregating results across the region rather than reporting BellSouth's results in Alabama.

According to AT&T and Covad, all of BellSouth's unilateral changes render its proposed Interim SQM unworkable and ineffective. AT&T and Covad assert that the Commission should thus decline BellSouth's invitation to rely on the performance reports and data based on BellSouth's Interim SQM because said SQM is deficient.¹³⁸

AT&T and Covad moreover assert that BellSouth's proposed Interim SQM does not properly disaggregate data.¹³⁹ Without sufficient measures and appropriate disaggregation, the Commission will be unable to perform an adequate analysis of whether BellSouth presently provides nondiscriminatory support.¹⁴⁰

AT&T and Covad further contend that merely establishing a Permanent SQM will not guarantee that BellSouth will provide nondiscriminatory access to its network and nondiscriminatory support. AT&T and Covad represent that the Commission should require BellSouth to provide accurate performance data generated under a Commission approved, Alabama-specific SQM before the Commission makes any §271 determination. Further, the Commission should review and audit three months of data

¹³⁵ *Id.* at 79-80.

¹³⁶ *Id.* at p. 80.

¹³⁷ *Id.* [Citing *Bursh* at Tr. p. 4688].

¹³⁸ *Id.*

¹³⁹ *Id.* p. 80-81.

¹⁴⁰ *Id.*

produced in accordance with said permanent SQM. According to Covad and AT&T, other states in the BellSouth region have followed this approach and have ordered the implementation of a Permanent SQM before §271 approval. They assert that following such an approach in Alabama will motivate BellSouth to comply with the market opening requirements of the Telecommunications Act.¹⁴¹

AT&T and Covad further contend that the Commission should adopt the performance measurement plan proposed by MCI WorldCom and AT&T because that plan remedies the inadequacies of BellSouth's proposed SQM's. They maintain that the CLEC plan includes changes to BellSouth's SQM's which are necessary to insure that the SQM this Commission adopts will satisfy the requirements of the Act and will provide CLECs a meaningful opportunity to compete in Alabama. As explained in more detail below, these changes include implementing additional performance measures, correcting BellSouth's flawed business rules and measures definitions, and establishing a level of disaggregation that will permit like-to-like comparisons.¹⁴²

AT&T and Covad assert that any performance measurement plan must be comprehensive because significant gaps in coverage can make it extremely difficult and time consuming to detect and deter discriminatory performance.¹⁴³ AT&T and Covad contend that the CLECs in this proceeding have demonstrated that BellSouth's plan lacks certain important ordering, provisioning, billing and numerous miscellaneous measures.¹⁴⁴ AT&T and Covad further assert that the CLEC proposed measures provide the Commission with the additional measures necessary to achieve a comprehensive SQM. They maintain that implementation of these measures will permit the Commission to fully analyze BellSouth's performance and determine whether it is meeting the requirements of the Act.¹⁴⁵

The CLEC proposed measures also include revised business rules and definitions for certain measures BellSouth already has in place. According to AT&T and Covad, these revisions will correct BellSouth's currently inaccurate and misleading definitions and business rules for these measures.¹⁴⁶ They assert that correct

¹⁴¹ *Id.*

¹⁴² *Id. at p. 81-82.*

¹⁴³ *Id. at p. 82 [Citing Tr. p. 4825 (Kinard)].*

¹⁴⁴ *Id. [Citing Tr. pp. 4827-4834 (Kinard)].*

¹⁴⁵ *Id.*

¹⁴⁶ *Id. [Citing Tr. p. 4804-4805 (Kinard)].*

definitions and business rules are important because they provide the framework and calculation methodology for the performance measures. When this framework is incorrect or is not being adhered to, the measures and associated performance data reports do not reflect BellSouth's actual performance. Thus, neither CLECs nor the Commission will be able to accurately gauge BellSouth's performance in these measures until BellSouth's definitions and business rules are corrected.¹⁴⁷

According to AT&T and Covad, another critical element to any performance measures plan is disaggregation--the process of breaking down performance data into sufficiently specific categories or dimensions so that like-to-like comparisons can be made.¹⁴⁸ The proper level of disaggregation is crucial because it prevents poor performance in one area from being obscured through combination with dissimilar performance data.¹⁴⁹ The CLECs propose geographical disaggregation at the metropolitan statistical area (MSA) level. They contend that this level of disaggregation is fundamental because without it, BellSouth could mask real performance disparities by combining performance data for rural, urban, competitive and noncompetitive areas.

Contrary to BellSouth witness Varner's assertion, AT&T and Covad maintain that the disaggregation the CLECs seek is reasonable. AT&T and Covad maintain that the CLECs are proposing "fewer than 2,800 levels of disaggregation with much overlap with the 2,200 that BellSouth says it now provides."¹⁵⁰ They assert that the additional disaggregation is thus minimal, but extremely important.

AT&T and Covad contend that Implementation of the CLEC proposal will provide the Commission with sufficiently detailed data to fully evaluate BellSouth's performance in Alabama, but will not unduly burden BellSouth. Moreover, they assert that the CLEC proposed measurements will effectively satisfy the requirements of the Act and protect nascent CLEC competition from the harmful effects of discriminatory performance by BellSouth. For these reasons, AT&T and Covad assert that the Commission should endorse the measurements as proposed by AT&T and WorldCom, Inc. in the proceedings.¹⁵¹

¹⁴⁷ *Id.*

¹⁴⁸ *Id. at p. 83 [Citing Tr. p. 4675 (Bursh)].*

¹⁴⁹ *Id.*

¹⁵⁰ *Id. at p. 83 [Citing Tr. p. 4806 (Kinard)].*

¹⁵¹ *Id. at p. 83.*

In addition to citing the aforementioned discrepancies in BellSouth's proposed Interim and Permanent SQM's, AT&T and Covad assert that BellSouth cannot establish that its performance data is accurate and reliable. AT&T and Covad maintain that the CLECs have identified various problems with BellSouth's data as did the Department of Justice in its review of BellSouth's initial 271 application for Georgia and Louisiana.¹⁵²

AT&T and Covad maintain that the CLEC intervenors have presented the Commission with significant examples of why BellSouth's self-reported data is unworthy. They maintain that evidence presented in this proceeding demonstrates that: (1) BellSouth's data is missing significant numbers of CLEC transactions; (2) BellSouth's SQM reports are inconsistent with each other; (3) BellSouth inappropriately excludes data from its raw data files and from certain measures; (4) the third party tests of BellSouth's performance measures reporting in both Florida and Georgia confirm the inconsistencies between BellSouth's performance report and the underlying data BellSouth allegedly uses to generate those reports, as well as discrepancies between the data BellSouth collects on the pseudo-CLEC and data the pseudo-CLEC collected about its own transactions; and (5) BellSouth does not provide all of the raw data underlying all performance measures so that the CLECs can evaluate discrepancies in BellSouth's reports. As a result, AT&T and Covad contend that BellSouth's data must be subjected to significantly more scrutiny before either CLECs or this Commission can rely upon it.¹⁵³

With regard to the significant data which AT&T and Covad contend is missing from BellSouth's performance data and the associated reports generated therefrom, AT&T and Covad point to the testimony of AT&T witness Ms. Sharon Norris who explained, for example, that BellSouth's FOC rejection performance reports did not include all of AT&T's LSRs. In fact, Ms. Norris represented that significant numbers of AT&T orders did not appear in BellSouth's reports that measure the timeliness of BellSouth's responses to CLEC orders. Ms. Norris maintained that BellSouth failed to include 15% of the data regarding the timeliness of BellSouth's responses to AT&T's orders in its Response Completeness reports.¹⁵⁴

¹⁵² *Id.* at p. 11 [Citing DOJ Evaluation of BellSouth's Initial Georgia/Louisiana 271 Application (Georgia/Louisiana I) at p. 33-36].

¹⁵³ *Id.* at p. 12.

¹⁵⁴ *Id.* at p. 13 [Citing Tr. p. 3347-3348 (Norris)].

AT&T and Covad point out that BellSouth admits that its Response Completeness reports are missing data, but nonetheless attempts to minimize its inability to provide accurate data for this measure by stating that it currently does not rely on these reports to evaluate its performance.¹⁵⁵ AT&T and Covad assert that BellSouth's attempt to deflect the Commission's attention from its failure in this regard is unavailing because the data BellSouth has reported is simply wrong.

AT&T and Covad maintain that when significant numbers of LSRs are missing, it calls into question not only how well BellSouth is performing for affected CLECs, but also the accuracy of the aggregate reports. They assert that it is impossible for the CLECs or the Commission to judge the level of BellSouth's performance when all of the data on all of the transactions are not reported. Absent a root cause analysis and implementation of corrections to ensure that all data is reported accurately and completely by BellSouth, AT&T and Covad assert that the Commission cannot rely on any of BellSouth's self-reported data.¹⁵⁶

AT&T and Covad further assert that the unreliability of BellSouth's data is also revealed by inconsistencies between related reports. They maintain that BellSouth's performance reports generated from common data sets do not agree. As AT&T witness Norris explained, BellSouth's business rules indicate that for any given operating company number (OCN), the volume of LSRs submitted and the Percent Rejected-Mechanized reports should match the number of LSRs submitted in the Flow Through report; the number of Fully Mechanized Rejections should match the number of Auto Clarifications in the Flow Through report and the number of Partially Mechanized Rejections should match the number of CLEC caused Fall Out in the Flow Through Report. AT&T and Covad maintain, however, that BellSouth's data reveals discrepancies among these data sets.¹⁵⁷

AT&T and Covad argue that the Commission cannot base any §271 recommendation on data that is wrong. AT&T and Covad assert that the problems identified by CLECs with regard to incorrect data go far beyond Mr. Varner's admission that BellSouth's reporting is not perfect.¹⁵⁸ AT&T and Covad in fact maintain that the

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at p. 14 [*Citing* Tr. p. 3279 (Norris)].

¹⁵⁸ *Id.* [*Citing* Tr. p. 2052 (Varner)].

inconsistencies within BellSouth's reports call into question all of the data BellSouth has presented in support of its §271 application. They argue that accurate, reliable data is a cornerstone of the fully considered §271 recommendation and that the Commission should accordingly not recommend 271 approval until BellSouth can provide the Commission and the CLECs with accurate and reliable performance reports.¹⁵⁹

AT&T and Covad further maintain that performance measures must include all appropriate data if they are to accurately represent BellSouth's performance. They contend that BellSouth inappropriately excludes certain data from the measures it reports.¹⁶⁰

AT&T and Covad agree that there are times when it is appropriate for BellSouth to exclude certain data from a measure. They maintain, however, that all data exclusions BellSouth applies should be exclusions listed in the SQM used to generate the data. They maintain that exclusions that are not included within BellSouth's SQM are unauthorized and inappropriate.¹⁶¹

AT&T and Covad represent that AT&T witness Norris provided the Commission with three examples of exclusions which BellSouth applies even though its proposed Interim SQM does not document these data exclusions (1) directory listing orders for certain ordering measures; (2) orders classified as projects for certain ordering measures; and (3) LSRs submitted in one month and rejected in another. As AT&T and Covad point out, BellSouth admits that it excludes directory listing orders from certain ordering measures and from performance data regarding LSRs received in one month but rejected in a different month.¹⁶² AT&T and Covad accordingly contend that BellSouth is not complying with the proposed Interim SQM it has presented to this Commission.¹⁶³

AT&T and Covad also maintain that BellSouth excludes some information related to the three areas discussed above from the raw data files it provides to CLECs. Thus, CLECs and the Commission cannot even review the data to determine whether BellSouth accurately determined if the data fits into one of the identified categories. AT&T and Covad maintain that it is inappropriate for BellSouth to withhold this

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* [Citing Tr. p. 3284 (Norris)].

¹⁶¹ *Id.*

¹⁶² *Id.* at p. 15 [Citing Tr. p. 2310-2311 (Varner)].

information. They assert that regardless of whether the information is required for the calculation of a specific measurement this Commission may adopt, it should be included in the raw data made available to the CLECs because such raw data is necessary to verify BellSouth's conclusions regarding what data should be included in BellSouth's reports and to determine whether BellSouth inappropriately excluded data. Moreover, AT&T and Covad argue that CLECs should be able to review BellSouth's total performance for CLECs whether or not the Commission has decided to require a measurement of that performance.¹⁶⁴

AT&T and Covad conclude that performance reports that exclude relevant data cannot be used to judge BellSouth's performance. They maintain that the reports in question are a fundamental way for CLECs to assess the quality of BellSouth's service and the accuracy of its performance reporting. AT&T and Covad thus represent that the Commission should withhold its consideration of BellSouth's §271 application until it is assured that the BellSouth's data exclusion problems are corrected. Additionally, they assert that the Commission should defer consideration of BellSouth's application until the Commission approves the exclusions BellSouth plans to apply, implements an Alabama SQM and has an opportunity to audit that data to insure BellSouth complies with the Alabama SQM.¹⁶⁵

Although the third party testing of BellSouth's OSS in Georgia and Florida will be discussed in more detail below, AT&T and Covad assert that those processes in Georgia and Florida have revealed problems with BellSouth's performance data. In fact, AT&T and Covad maintain that the Georgia third party test generated a number of key data integrity exceptions related to data retention and data replication issues.¹⁶⁶

As an example of the data integrity problems identified in the ongoing third party tests, AT&T and Covad point out that KPMG Consulting, Inc. (KPMG) issued Georgia exception 137 because it could not match the data it collected to BellSouth's data for three ordering measures. They assert that KPMG explained the importance of this exception as follows: "CLECs rely on BellSouth's performance measurement reports to assess the quality of service provided by BellSouth and to plan future business

¹⁶³ *Id.*

¹⁶⁴ *Id.* at pp. 15-16 [Citing Tr. pp. 3264-3265 (Norris)].

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at p. 16 [Citing Tr. pp. 5931-5934 (McElroy)].

activities. If SQM reports are based on incomplete and inaccurate raw data, CLECs will not receive accurate SQM information for these purposes.”¹⁶⁷ AT&T and Covad maintain that KPMG Georgia exceptions 79 and 89, both relating to BellSouth’s data collection and reporting, are still open because BellSouth has not resolved the problems underlying such exceptions.¹⁶⁸

AT&T and Covad further assert that KPMG’s third party testing process in Florida is also uncovering numerous problems relating to the reliability of BellSouth’s performance measurement reporting. They assert that KPMG has, in its Florida test, been unable to replicate a number of BellSouth’s reports using the raw data BellSouth makes available. They assert that Ms. Norris, on behalf of AT&T, detailed how KPMG issued 11 exceptions in Florida relating to the calculation of performance measures.¹⁶⁹ They assert that KPMG issued six of those exceptions because it could not replicate BellSouth’s performance reports.¹⁷⁰

In addition, AT&T and Covad maintain that a third party audit of BellSouth’s data is ongoing in Georgia. They assert that the Georgia Commission ordered KPMG to complete an audit of BellSouth’s performance measures, processes and data after BellSouth modified approximately 70% of those measures in response to an order entered by the Georgia Commission in January 2001.¹⁷¹ The Florida data integrity evaluation is also ongoing and is largely incomplete.¹⁷² Until these audits are complete, AT&T and Covad assert that the Commission cannot have confidence in the accuracy of the data BellSouth has provided.¹⁷³

AT&T and Covad conclude that the Commission should not rely upon any of BellSouth’s self-reported performance data to evaluate whether BellSouth provides nondiscriminatory access to local services. They contend that the data integrity problems KPMG and the CLECs have identified demonstrate that BellSouth’s data is unverifiable and unreliable.¹⁷⁴ AT&T and Covad also point to the Department of Justice’s initial conclusion that “BellSouth has problems systematically collecting and

¹⁶⁷ Georgia exception 137 Docket No. 8354, available at <http://www.psc.state.ga.us>.

¹⁶⁸ *Id.* at p. 17 [Citing Tr. p. 5933-5934 (McElroy)].

¹⁶⁹ *Id.* [Citing Tr. p. 3287 (Norris)].

¹⁷⁰ *Id.*

¹⁷¹ *Id.* [Citing Tr. p. 5934-5935 (McElroy)].

¹⁷² *Id.* at p. 18 [Citing Tr. p. 3265 (Norris)].

¹⁷³ *Id.* at p. 18.

¹⁷⁴ *Id.* at p. 18.

processing the data underlying its measures” as support for their position.¹⁷⁵ AT&T and Covad accordingly assert that any attempt by BellSouth to rely on self-generated performance reports to convince the Commission that it deserves §271 authority should be rejected until BellSouth can establish that the underlying data are reliable.¹⁷⁶

(iii) The Position of ITC DeltaCom

ITC DeltaCom maintains that it audited the Alabama Performance Measurement and Analysis Platform data for the measure of Maintenance Average Duration-UNE Loops for February of 2001 for ITC DeltaCom specific data. ITC DeltaCom asserts that the report was inaccurate in that it did not capture all of ITC DeltaCom’s trouble tickets issued in that month. ITC DeltaCom is thus concerned that if the data for ITC DeltaCom is flawed, the overall service quality measurement data for all CLECs is flawed. ITC DeltaCom thus concludes that the Commission should require an independent audit or review of said data prior to relying upon BellSouth’s PMAP or SQM reports.¹⁷⁷

(iv) The Position of KMC

KMC asserts that BellSouth fails to report critical performance data and that the data which BellSouth does report has not been independently verified. As support for this position, KMC specifically points to BellSouth’s admission that it is still working to improve its data collection methods. KMC asserts that the problem is compounded by BellSouth’s request that the Commission not to rely upon several key metrics.¹⁷⁸

Given the aforementioned admissions by BellSouth, KMC is concerned that there may be many other problems with BellSouth’s data reporting that remain undiscovered at present. KMC asserts that until all such essential accuracy issues are resolved with regard to BellSouth’s data reporting, the Commission cannot accept BellSouth’s data at face value.¹⁷⁹

(v) The Rebuttal Position of BellSouth

In response to the allegations raised by the CLECs regarding its Interim SQM and the integrity of the reports reflected in the SQM, BellSouth notes that it has been reporting Alabama data using the Interim SQM since March 2001. BellSouth maintains

¹⁷⁵ *Id.* at p. 18 [Citing DOJ Evaluation of BellSouth’s Initial Georgia/Louisiana §271 Application (Georgia/Louisiana I) at p. 33].

¹⁷⁶ *Id.*

¹⁷⁷ ITC DeltaCom Post-Hearing Brief at p. 17 [Citing Tr. pp. 6196-6197 (*Conquest*)].

¹⁷⁸ KMC Post Hearing Brief at p. 8 [Citing generally BellSouth’s supplemental Exhibit AJV-6 (filed August 17, 2001)].

¹⁷⁹ KMC Post Hearing Brief at pp. 8-9.

that the performance data it has reported confirms that BellSouth's performance in Alabama is nondiscriminatory. Although BellSouth recognizes that the development of a detailed and comprehensive performance measurement system is a dynamic, ongoing process and that errors may occur in a system as large as PMAP, BellSouth nonetheless maintains that it has introduced persuasive evidence of the reliability of its performance data. BellSouth further contends that there have been no systemic deficiencies identified with its performance data that would impact the Commission's ability to evaluate its performance.¹⁸⁰

BellSouth argues that it has in place a series of validation practices that are designed to ensure the integrity of its data.¹⁸¹ First, BellSouth's systems have internal quality assurance controls. As a part of such controls, BellSouth's systems execute a number of validation checks to ensure that no records are lost between databases from the legacy systems and PMAP staging. Second, validation scripts are used to ensure that the raw data made available to CLECs on the Internet can be used to produce the PMAP reports posted to the PMAP web site. Third, BellSouth performs a number of manual data validation processes within and between data processes to ensure the accuracy and completeness of the data. The validation process includes both validation of the code and a reasonableness validation of the data itself. BellSouth asserts that such checks are in place for BellSouth and CLEC data.¹⁸²

BellSouth further notes that its data has been validated by multiple third party audits such as those conducted by KPMG regarding BellSouth's Georgia data. BellSouth notes that KPMG concluded from such audits that its OSS were operationally ready and nondiscriminatory.¹⁸³ BellSouth further notes that its proposed Permanent SQM and Self Effectuating Enforcement Mechanism (SEEM) plan provide for additional annual third party audits of the measurements including annual SQM audits for the next five years. BellSouth maintains that these ongoing audits will ensure that the data it provides will continue to be reliable following BellSouth's entry into the Alabama interLATA services market.¹⁸⁴

¹⁸⁰ BellSouth Post Hearing Brief at pp. 35-36.

¹⁸¹ BellSouth Post Hearing Brief p. 36 [*Citing* Tr. p. 2149 (*Varner*)].

¹⁸² *Id.*

¹⁸³ BellSouth Post Hearing Brief p. 37 [*Citing* Tr. pp. 5818-5821 (*McElroy*)].

¹⁸⁴ BellSouth Post Hearing Brief pp. 37-38.

BellSouth again points out that it has been reporting performance data in Georgia and Louisiana for over three years. BellSouth notes that it has not encountered a CLEC request to invoke the dispute resolution process in place to resolve discrepancies concerning BellSouth's reported performance measures.¹⁸⁵ BellSouth also notes that it employs a review process which continues after BellSouth has made its performance data publicly available. More particularly, BellSouth represents that it checks this data to ensure that its performance reports are complete and accurate. In the event that data are determined to be inaccurate, BellSouth maintains that it promptly corrects such data on its web site, provides CLECs with notice that corrected data are available and refiles corrected data with the appropriate regulatory bodies. BellSouth argues that this practice ensures that CLECs and the Commission have access to the most complete, up-to-date information available to assess BellSouth's performance.¹⁸⁶

BellSouth particularly disputes the CLEC allegations that they cannot verify BellSouth's reports because BellSouth fails to provide them with raw data. BellSouth maintains that the CLECs which raised these arguments, such as AT&T, misunderstand the difference between early stage data and raw data. BellSouth maintains that raw data are the individual records that support the calculations made in the reports, while early stage data are the raw extracts from the legacy systems, most of which are irrelevant to performance measures.

BellSouth asserts that it is not required to identify to CLECs all of the data that were excluded from early stage data to create the raw data. BellSouth maintains that CLECs would not gain any benefit from access to early stage data because much of it is unformatted transaction data from different systems. BellSouth further notes that the sheer volume of such data, as well as the risk of disclosure of proprietary CLEC information, further complicates the use of early stage data by a CLEC. BellSouth maintains that CLECs are offered an opportunity to access all records that were used to compile the reports in an understandable and manageable format.¹⁸⁷

With regard to the CLEC allegations of missing transactions from certain of its reports, BellSouth asserts that the alleged "missing" data are not missing at all. For example, BellSouth responds to AT&T's allegations that BellSouth's performance

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

reports are flawed because they report different volumes for measures that should be the same by stating that the alleged discrepancies are the results of different codes, different business rules, and different calculations; in short, the measures are not intended to be the same.¹⁸⁸ In other instances, BellSouth maintains that the CLEC allegations of alleged flaws in BellSouth's reports are the result of the misinterpretation of such reports.¹⁸⁹

With regard to the CLEC's allegations regarding the exclusion of some of its orders,¹⁹⁰ BellSouth maintains that its evidence demonstrates that the PMAP database is an enormous undertaking that is naturally subject to minor coding mistakes and similar administrative errors. Nonetheless, to maximize reliability, BellSouth notes that it has instituted an audit process to catch most of those errors.¹⁹¹ As an example, BellSouth references AT&T's contention that certain Local Number Portability ("LNP") data was missing for the December 2000 data month. BellSouth maintains that upon investigation, it determined that one of AT&T's operating company numbers ("OCN's") was missing from the reports and BellSouth did not report LNP data for all other AT&T OCNs. Moreover, as of April 2001, BellSouth points out that it reports data for the missing OCN and thus AT&T's concern has been resolved.¹⁹²

BellSouth further argues that the KMPM Georgia exceptions 79 and 89 cited by AT&T do not impact the Commission's findings on the reliability of BellSouth's data. BellSouth argues that exception 79 dealt with data retention and was resolved with the implementation of a data retention policy. With regard to exception 89, BellSouth asserts that only two issues remain open and maintain that the impact of each of the open issues is less than 1%.¹⁹³

With regard to AT&T's allegations that BellSouth has altered its SQM in violation of the Georgia Commission's requirements, BellSouth points out that the Georgia Commission accepted BellSouth's performance data and approved BellSouth's §271 application. BellSouth asserts that it is unlikely that the Georgia Public Service Commission would have taken such action had it believed that BellSouth had violated

¹⁸⁷ BellSouth Post Hearing Brief p. 39 [*Citing* Tr. pp. 2442-2445 (*Varner*)].

¹⁸⁸ *Id.* [*Citing* Tr. pp. 2154-2157 (*Varner*)].

¹⁸⁹ *Id.* [*Citing* Tr. p. 2159 (*Varner*)].

¹⁹⁰ Tr. pp. 3317-3318 (*Norris*).

¹⁹¹ BellSouth Post Hearing Brief p. 40.

¹⁹² *Id.* [*Citing* Tr. p. 2152 (*Varner*)].

its Performance Measurements Order. Moreover, BellSouth asserts that every change noted by AT&T was made at the direction of KPMG, the Georgia Commission, or in an effort to better define the calculation already being made. BellSouth maintains that it did not modify the calculations of any measures, it only made wording changes to further clarify such measurements.¹⁹⁴

BellSouth asserts that it has shown that it is fully committed to rigorous, multilevel reviews and audits of its performance measures to ensure the validity of its data. BellSouth further contends that the validity and integrity of its data are also maintained through internal quality assurance controls and manual data validation processes within and between data processes. BellSouth thus concludes that the CLEC accusations regarding the completeness and validity of its data are unfounded. BellSouth urges the Commission to find that it has implemented its SQM in full compliance with the Georgia Commission's requirements and that its data is reliable.¹⁹⁵

(c) The Determination of the Commission

We note that BellSouth has, with the permission of this Commission, been filing service quality measurement data for Alabama in the format adopted by the Georgia Public Service Commission since January of 1999. This Commission recognized early on the value and utility of, where possible, building on the work of other states in the BellSouth region in conducting a §271 review of BellSouth. This is a concept that has been recognized and in fact encouraged by the FCC.¹⁹⁶

With the objective of building on the work undertaken by the Georgia Public Service Commission as well as the Louisiana Public Service Commission, the Commission has required monthly reports from BellSouth concerning the status of the performance measurement proceedings in both Georgia and Louisiana. The fact that the Commission closely followed the developments in Georgia and Louisiana with respect to performance measurements and accepted, on a monthly basis, BellSouth's SQM filings for Alabama in the Georgia format amounts to a *de facto* approval of the Georgia SQM format. We also note that no party ever attempted to raise a challenge

¹⁹³ *Id.* [Citing Tr. pp. 2169-2170 (Varner)].

¹⁹⁴ BellSouth Post Hearing Brief at pp. 40-41.

¹⁹⁵ *Id.*

¹⁹⁶ *Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Kansas and Oklahoma*, 16 FCC Rcd. 6237, ¶2 (2001) ("SWBT-Kansas/Oklahoma Order").

concerning the format in which BellSouth filed its SQM data with the Commission until the proceedings which recommenced in this cause in June of 2001.

As recognized by the parties, BellSouth began reporting Alabama performance data in the format of the Interim SQM it proposes for adoption herein in March of 2001. The CLEC intervenors express great concern that BellSouth implemented numerous changes to its Interim SQM which were not approved by the Georgia Public Service Commission. The CLEC intervenors generally contend that these allegations, along with the numerous other data discrepancies alleged in the preceding discussions, render BellSouth's reported data unreliable for purposes of this §271 evaluation.

We have considered each of the data integrity arguments raised by the CLEC intervenors and BellSouth's responses thereto. We find that while BellSouth's data reporting procedures have certainly been less than perfect, BellSouth has diligently endeavored to improve the quality and reliability of its reported data.

We are perhaps most persuaded, however, by the FCC's recent findings in its *Georgia/Louisiana Order* with respect to the reliability of the data submitted by BellSouth.¹⁹⁷

"In view of the extensive third-party auditing, the internal and external data controls, the open and collaborative nature of metric workshops in Georgia and Louisiana, the reliability of the raw performance data, BellSouth's readiness to engage in data reconciliations, and the oversight of the Georgia and Louisiana Commissions, we are persuaded that, as a general matter, BellSouth's performance metric data is accurate, reliable, and useful. We furthermore cannot find general allegations of problems with the reliability of BellSouth's data provide sufficient reason to reject BellSouth's application. BellSouth's data has been subject to a series of audits overseen by the state Commissions, and the previous audits have demonstrated that almost all the data is reliable and accurate. While the current audit has generated exceptions, the record demonstrates, through BellSouth's analysis, the interim status report from KPMG, and the comments by the state Commissions, that the problems identified have had, for the most part, only a small impact on the data presented to us. We recognize that BellSouth's data continues to be subjected to third party audit, but we cannot as a general matter insist that all audits must be completed at the time a §271 application is filed at the Commission. Moreover, we note that the data has shown greater stability in recent months, with fewer metrics identified by BellSouth as having significant or fatal flaws. BellSouth has also undertaken to settle disputes concerning its reported performance metric data with competing carriers

¹⁹⁷ *Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision of In-Region InterLATA Services in Georgia and Louisiana*, Memorandum Opinion and Order, CC Docket No. 02-35, ¶19 (Rel. May 15, 2002) (the "*Georgia/Louisiana Order*").

through data reconciliations, and provides carrier-specific reports to competing carriers. In addition, BellSouth has made available to competing carriers and regulators most of the raw data it uses for its calculations in its data warehouse called PMAP.” (*footnotes omitted*)

Although the FCC heeded the recommendations of the Department of Justice and considered evidence other than performance data on certain checklist items where credible challenges to BellSouth’s performance data had been raised, the ultimate conclusion of the FCC was that BellSouth’s performance data was sufficiently reliable for purposes of conducting its §271 evaluation.¹⁹⁸ The FCC also imposed ongoing reporting requirements on BellSouth and emphasized that BellSouth’s failure to provide complete and accurate data could result in enforcement action.¹⁹⁹

Much like the FCC, we have assessed the reliability of BellSouth’s data in light of the CLEC allegations of its deficiencies and BellSouth’s actions and responses to those CLEC allegations. We conclude that in light of the totality of the circumstances presented, BellSouth has demonstrated that its reported data is sufficiently reliable. We accordingly adopt BellSouth’s Interim SQM for purposes of assessing BellSouth’s performance in this proceeding. For purposes of BellSouth’s future performance reporting, we adopt, on an interim basis, the SQM BellSouth has been ordered to file by the Georgia Public Service Commission pursuant to its Order entered on January 12, 2001 in its Docket 7892-U. On or before November 30, 2002, however, the Commission will establish a proceeding to determine the merits of permanently adopting, for purposes of Alabama, the SQM recently adopted by the Florida Public Service Commission pursuant to its Order Number PSC-02-0187-FOF-TP entered on February 12, 2002, in its Docket 000121-TP and amended pursuant to Order Number PSC-02-0187A-FOF-TP entered on March 13, 2002.

2. Checklist Item 1: Interconnection in Accordance with the Requirements of §§251(c)(2) and 252(d)(1)

(a) The Requirements of the Act

Checklist Item 1²⁰⁰ specifies that the interconnection offered by BellSouth to other telecommunications carriers must be in accordance with the requirements of §251(c)(2) and §252(d)(1). Section 251(c)(2) requires BellSouth to provide for

¹⁹⁸ *Id.* at ¶20.

¹⁹⁹ *Id.*

²⁰⁰ 47 U.S.C. §271(c)(2)(B)(i).

interconnection of the facilities and equipment of any requesting telecommunications carrier with BellSouth's network for the purposes of the transmission and routing of telephone exchange service and exchange access. This interconnection must be provided at "any technically feasible point" within BellSouth's network and "must be at least equal in quality" to that provided by BellSouth "to itself or any of its subsidiaries, affiliates, or any other party" for which BellSouth provides interconnection. As previously found by the FCC, technically feasible methods of interconnection include, but are not limited to, physical and virtual collocation at the premises of BellSouth.²⁰¹

Section 252(d)(1) addresses the rate requirements for interconnection. More specifically, the interconnection discussed above must be provided "on rates, terms and conditions that are just, reasonable and nondiscriminatory." Further, such interconnection rates "must be non-discriminatory and cost-based", and "may include a reasonable profit."

(b) The Position of BellSouth

(i) Methods of Interconnection

BellSouth maintains that it has successfully demonstrated that CLECs can interconnect to its network through: (1) Physical collocation; (2) virtual collocation; (3) assembly point arrangements; (4) fiber-optic point arrangements; and (5) the purchase of facilities from other parties. BellSouth maintains that it makes these arrangements available at the line side or trunk side of the local switch; the trunk connection points of a tandem switch; central office cross-connect points; out-of-band signaling transfer points; and the point of access to UNEs. BellSouth points out that no CLEC disputes that BellSouth provides interconnection at any technically feasible point within its network.²⁰²

(ii) Non-Discriminatory Access to Interconnection Trunks

BellSouth maintains that the evidence it submitted demonstrates that its interconnection agreements subject it to a legal obligation to provide interconnection in accordance with FCC rules as previously held in the *Second Louisiana Order*.²⁰³ BellSouth represents that it follows the same installation process and uses the same equipment interfaces, technical criteria, personnel and service standards for both

²⁰¹ *Second Louisiana Order* ¶62.

²⁰² BellSouth Post Hearing Brief at p. 48 [*Citing* Tr. pp. 1349-1351 (*Milner*)].

CLECs and itself. BellSouth notes that in Alabama, the evidence shows that it has provisioned 19,037 interconnection trunks from CLEC switches to BellSouth switches as of March 31, 2001 and 9,570 two-way trunks (including transit traffic) to 16 different CLECs.²⁰⁴ For June through September 2001, BellSouth contends that the retail analog for trunk group performance was met. BellSouth asserts that this high level of performance indicates that CLECs can, and do, interconnect with BellSouth's network.²⁰⁵

(iii) Collocation

BellSouth recognizes that the provision of collocation is an essential prerequisite to its demonstration of compliance with Checklist Item 1. BellSouth also recognizes that in order to demonstrate compliance with its collocation obligations, it must have processes and procedures in place to insure that all applicable collocation arrangements are available on terms and conditions that are "just, reasonable and non-discriminatory" in accordance with §251(c) and the FCC's implementing rules.²⁰⁶ BellSouth further notes that the Commission may rely on data showing the quality of procedures for processing applications for collocation space, as well as the timeliness and efficiency of provisioning collocation space, in its assessment of BellSouth's compliance with applicable collocation obligations.²⁰⁷

BellSouth maintains that it has presented interconnection agreements, a tariff and an SGAT that establish legally binding collocation terms and conditions consistent with §§271 and 251 of the Act.²⁰⁸ Regarding physical collocation, BellSouth points out that it offers caged, shared caged, cageless, remote site and micro collocation at the option of CLECs. BellSouth further indicates that it offers adjacent collocation space if space in a particular premises is legitimately exhausted. BellSouth also maintains that virtual collocation is available at a CLEC's request regardless of the availability of physical collocation. BellSouth further represents that it makes physical collocation available in its remote terminals.²⁰⁹

²⁰³ See *Second Louisiana Order* at footnote 210.

²⁰⁴ BellSouth Post Hearing Brief at p. 48-49 [*Citing* Tr. pp. 1350-1352 (*Milner*)].

²⁰⁵ BellSouth Post Hearing Brief at p. 49.

²⁰⁶ *SWBT Texas Order* at ¶64.

²⁰⁷ *Id.*

²⁰⁸ BellSouth Post Hearing Brief at p. 52 [*Citing* Tr. p. 116 (*Ruscilli*)].

²⁰⁹ BellSouth Post Hearing Brief at p. 52 [*Citing* Tr. p. 1359-1360 (*Milner*)].

BellSouth contends that the commercial usage and performance data it submitted demonstrate that it provides non-discriminatory access to collocation. As of March 31, 2001, BellSouth represents it has provisioned 479 physical collocation arrangements and 9 virtual collocation arrangements for over 30 different CLECs in Alabama. BellSouth indicates that another 161 physical collocation arrangements were underway as of March 31, 2001. In addition, BellSouth represents that CLECs are collocated in 63 of the 151 central offices in Alabama.²¹⁰

With regard to BellSouth's collocation performance as reported to the Commission, BellSouth notes that it has met every collocation submetric for every month from May through September 2001 in Alabama. BellSouth contends that this type of collocation performance data is compelling evidence of its compliance with the Act's interconnection requirements.²¹¹

(c) The Position of AT&T and Covad

(i) Methods of Interconnection

With regard to the methods of interconnection, AT&T contends that the Act and the rules of the FCC permit CLECs, not ILECs, to implement their networks by choosing any technically feasible point of interconnection that the CLECs deem to be appropriate. As a result, CLECs are permitted to interconnect at any technically feasible point within BellSouth's network and must not be required to interconnect at more than one point within a LATA unless the CLEC chooses to do so. AT&T contends that any ILEC action that interferes with these rights, including financial penalties of the nature that BellSouth will impose for not mirroring its network, are prohibited.

AT&T argues that when a BellSouth end user customer originates a call on BellSouth's network, BellSouth is responsible for all of the costs for completing that call onto the CLEC's network. The reciprocal is also true - when a CLEC end user customer originates a call on a CLEC network, the CLEC is responsible for all of the costs for completing that call onto BellSouth's network.

AT&T contends that BellSouth has not complied with the above requirements. Specifically, AT&T contends that in most instances where a call that a BellSouth customer originates passes outside of the BellSouth defined basic local calling area

²¹⁰ *Id.* [Citing Tr. pp. 1361-1363 (*Milner*)].

²¹¹ BellSouth Post Hearing Brief at p. 52-53 [Citing *SWBT Texas Order* &64].

(even though the call is not transported out of the relevant LATA), BellSouth requires the CLEC to implement another Point of Interconnection (POI) and basic local calling area to handle such call flows or pay for not having done so. According to AT&T, this requirement is not consistent with the FCC rules that require that the CLEC, and not BellSouth, specify where POIs will be located and the FCC requirement that there need only be one interconnection point per LATA. AT&T maintains that BellSouth is attempting to inappropriately transfer to CLECs the costs for which BellSouth is responsible related to transporting and terminating calls that BellSouth's customers originate.²¹²

(ii) Non-Discriminatory Access to Interconnection Trunks

With regard to non-discriminatory access to interconnection trunks, AT&T and Covad assert that a consideration of interconnection pursuant to Checklist Item 1 necessarily involves a consideration of the deployment of trunks between CLEC switches and BellSouth switches. AT&T & Covad note that such trunks allow for the completion of calls between CLEC customers and BellSouth customers, regardless of which party originates the call. AT&T and Covad state that in determining whether an ILEC provides interconnection equal in quality to that which it provides itself, the FCC considers the incidents of trunk blockage and has found that "disparities in trunk group blockage indicate a failure to provide" equal-in-quality interconnection.²¹³

AT&T and Covad assert that the trunks in Alabama may be put into four categories: common transport trunk groups (CTTG), BellSouth's local network trunks, BellSouth administered CLEC trunks, and CLEC administered CLEC trunks.²¹⁴ AT&T and Covad represent that of the four categories, BellSouth administered CLEC trunks experience far greater instances of trunk blockage than any of the other categories. Specifically, AT&T and Covad maintain that in April 2001, 4.6% of the BellSouth administered CLEC trunk groups for Alabama were observed blocking above a 3% measured blocking threshold while 3.9% of the CLEC administered CLEC trunk groups for Alabama were observed blocking above a 3% measured threshold. In contrast, only

²¹² Tr. pp. 2599-2621 (*Turner*).

²¹³ AT&T Post Hearing Brief at p. 71 [*Citing Second Louisiana Order ¶77, Bell Atlantic New York Order ¶64*].

²¹⁴ See AT&T Exhibit 70.

1.7% of BellSouth's local network trunks for Alabama observed blocking over a 3% blocking threshold.²¹⁵

AT&T and Covad note that in its *Second Louisiana Order*, the FCC derived trunk blockage rates for comparison purposes by dividing the percentage of CLEC trunk groups blocked by the percentage of BellSouth retail trunk groups blocked.²¹⁶ Using the FCC's calculation method, AT&T and Covad maintain that the CLEC trunk blockage percentage in Alabama for January 2001 was 444% greater than the trunk blockage percentage for BellSouth's retail trunk groups, 596% greater in February 2001, 557% greater in March 2001 and 727% greater in April 2001.²¹⁷ In contrast, the CLEC trunk blocking percentages reflected in the *Second Louisiana Order* were 54.5%, 69.2% and 38.8% greater than that experienced by BellSouth for the months included.²¹⁸ AT&T and Covad assert that these numbers indicate recent percentage blocking differences which far exceed those from BellSouth's second Louisiana §271 application. So long as such disparity continues to exist, AT&T and Covad allege that BellSouth cannot demonstrate that it provides interconnection to CLECs equal in quality to that which it provides itself and thus cannot show that it provides non-discriminatory access to interconnection.

Rather than remedy the high incidents of trunk blockage among BellSouth administered CLEC trunk groups, AT&T and Covad represent that BellSouth has responded by creating a new metric for measuring trunk blockage that masks its deficient performance. Rather than employing the methodology the FCC used in the *Second Louisiana Order*, AT&T and Covad assert that BellSouth's new report gives an average of blocking that occurs across all trunks statewide.²¹⁹ AT&T and Covad contend that this kind of measurement masks the poor performance of specific trunk groups. For example, if there is a significant trunk blockage in Montgomery and very little blockage in the other cities and towns around the state, BellSouth's new report will easily mask the blockage of Montgomery. Accordingly, AT&T and Covad maintain that

²¹⁵ AT&T Post Hearing Brief at p. 72 [*Citing* Tr. p. 1511-1512 (*Milner*) and AT&T Exhibit 70].

²¹⁶ *Second Louisiana Order* at ¶77, note 218.

²¹⁷ AT&T/Covad Post Hearing Brief at p. 72 [*Citing* Tr. pp. 1568-1569 (*Milner*); See also US LEC Exhibit 4].

²¹⁸ *Second Louisiana Order* ¶77 note 218.

²¹⁹ AT&T/Covad Post Hearing Brief at p. 73 [*Citing* Supplemental Joint Testimony of Alphonso J. Varner filed May 16, 2001, AJV-6 at 15-16 and BellSouth Exhibit 350 at Attachment 30].

the Commission should not rely on this new report to determine whether BellSouth provides non-discriminatory access to interconnection.

AT&T and Covad assert that the Commission should instead base its analysis on the trunk group service summary which more closely accords with the FCC's position on this issue. They maintain that the trunk group service summary shows the vast disparity in trunk performance between BellSouth and registered CLEC trunk groups and remaining trunk groups. AT&T and Covad accordingly urge the Commission to require BellSouth to eliminate the disparity in trunk group performance prior to granting BellSouth interLATA authority.²²⁰

AT&T further alleges that the excessive blocking experienced by CLECs will not be alleviated until BellSouth improves its processes for augmenting trunks behind its tandems.²²¹ AT&T also alleges that BellSouth's inadequate provisioning process for interconnection trunks results in delays in the provisioning of trunks that are necessary for interconnection. AT&T maintains that such delays have a detrimental impact on AT&T's customers.²²² Similarly, AT&T maintains that the policy which BellSouth implemented in the fall of 2000, limiting the capacity of AT&T's tandem trunks to 10% of the total capacity of AT&T trunks directly to end offices, violates good engineering practice, makes high levels of blocking a virtual certainty and inhibits AT&T's ability to compete.²²³

AT&T further alleges that BellSouth sometimes disconnects AT&T trunks with little or no warning to AT&T when BellSouth makes a decision to reduce the number of trunks in a trunk group that it judges to be under utilized. AT&T alleges that such disconnection of interconnection trunks without its knowledge and approval is less efficient than BellSouth's treatment of its retail operations and violates the "just, reasonable and non-discriminatory" requirement of the Act and the FCC's rules.²²⁴

AT&T further contends that it has recently had difficulty getting BellSouth technicians to correctly identify problems with interconnection trunks and once they are identified, to quickly repair them. AT&T cites an example of a situation where calls were being blocked at one of BellSouth's tandem switches. AT&T maintains that it reported

²²⁰ AT&T/Covad Post Hearing Brief at pp. 73-74.

²²¹ Tr. p. 2731 (*Wilson*).

²²² *Id.*

²²³ *Id.* at p. 2734.

the problem to BellSouth, but BellSouth insisted the problem was on the AT&T side. AT&T contends that it then had to prove the problem was actually at the BellSouth switch and request that a new port card be installed. According to AT&T, BellSouth technicians refused to install the card without authorization even though blocking was occurring. AT&T alleges that it was unable to find a BellSouth manager to authorize the repair until the next day which resulted in trunk blocking for an additional sixteen (16) hours.²²⁵

(iii) Collocation

AT&T alleges that BellSouth cannot be found to be checklist compliant with regard to collocation because BellSouth maintains unilateral control over the terms and conditions of collocation through the use of its collocation handbook. AT&T asserts that BellSouth's collocation handbook is the only document which is sufficiently detailed to adequately set forth the generally available terms and conditions of collocation. AT&T maintains that the problem with BellSouth's reliance on the collocation handbook as establishing the terms and conditions for collocation is that the collocation handbook can be altered by BellSouth without Commission approval or CLEC input. AT&T represents that an approved statewide collocation tariff would be a better alternative because such a document could not be unilaterally altered by BellSouth.²²⁶

AT&T further asserts that BellSouth's collocation handbook results in the occurrence of unnecessary extraneous expenses by CLECs as well as collocation inefficiencies. More particularly, AT&T argues that BellSouth's unilateral control over the collocation terms and conditions has allowed it to assess CLECs for costs which are inconsistent with the Total Element Long Run Incremental Cost (TELRIC) principles. As an example, AT&T maintains that heating, ventilating and air conditioning (HVAC) costs should be based on the costs of providing HVAC systems to the entire central office and prorated to the users of the central office, either on the amount of space occupied, or by another mechanism tied directly to the heating or air conditioning required in the space. AT&T asserts that requiring a collocater to pay for the upgrade of the HVAC systems simply because the collocater had the most recent need for HVAC does not reflect the

²²⁴ *Id.* at p. 2734-2735.

²²⁵ *Id.* at p. 2735-2736.

²²⁶ Tr. p. 2580-2585 (*Turner*).

TELRIC approach because the collocator forced to incur those costs is not receiving the same cost efficiency benefits that BellSouth is enjoying.

AT&T maintains that perhaps the most common issue that AT&T and all other CLECs are experiencing with this discriminatory approach to cost recovery is with BellSouth's DC power augments and charges. AT&T maintains that BellSouth's collocation handbook assesses charges to collocators on an individual case basis for the cost of DC power augments when BellSouth does not have sufficient capacity in its DC power plant to provide DC power to the collocation arrangement. AT&T maintains that BellSouth is in fact double recovering for its DC power plant by charging CLECs a non-recurring, individual case basis charge for augments to the DC power plant, but also charging collocators generally for the recurring costs to recover BellSouth's initial investment in the DC power plant.²²⁷

AT&T also maintains that BellSouth's requirement that collocators utilize an authorized BellSouth contractor to perform work on facilities between BellSouth's designated frame and the CLECs collocated equipment creates inefficiencies because BellSouth is in complete control of all the information needed for collocation. AT&T maintains that the end result is that CLECs perform unnecessary functions that needlessly increase their collocation costs.²²⁸

AT&T further asserts that BellSouth's unilateral control regarding the distance of collocation space from interconnection points can result in discriminatory treatment. AT&T witness Turner maintains that his experience in some 17 states indicates that ILECs will, when given the latitude, place CLEC collocation space as far from designated interconnection points as possible and reserve the shorter distances for themselves or their affiliates.²²⁹ AT&T maintains that the distance for physical interconnection arrangements has a major impact with regard to DC power cabling which becomes increasingly expensive with greater distances.²³⁰

AT&T also alleges that BellSouth fails to offer shared collocation in accordance with the FCC's *Advanced Services Order*.²³¹ In particular, AT&T maintains that

²²⁷ Tr. p. 2585-2587 (*Turner*).

²²⁸ Tr. pp. 2588-2589 (*Turner*).

²²⁹ Tr. pp. 2590-2591 (*Turner*).

²³⁰ Tr. pp. 2592-2593 (*Turner*).

²³¹ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 114 FCC Rcd. 4761 (1999) ("Advanced Services Order").

BellSouth's collocation handbook describes "Shared (Subleased) Caged Collocation" in the same way that the FCC describes it in the *Advanced Services Order* as Subleased collocation and not Shared Collocation.²³²

AT&T further maintains that BellSouth fails to provide for adjacent, off-site collocation even though such arrangements are provided by similarly situated ILECs and permitted by the FCC's *Advanced Services Order*. AT&T concedes that the FCC's *Advanced Services Order* does not explicitly require or prohibit off-site, adjacent collocations, but nonetheless maintains that adjacent space collocation is intended to ensure interconnection and access to UNEs when space is unavailable inside the central office. In support of its position, AT&T points out that several ILECs already provide for adjacent off-site collocation.²³³

Covad criticizes BellSouth's position regarding the location of the demarcation points for Covad's collocation arrangements. Specifically, Covad maintains that because of a disagreement with BellSouth regarding the appropriate point of demarcation for Covad in a central office, Covad was forced to hold over 100 applications for collocation space for weeks. Covad maintains that it advised BellSouth that it preferred the demarcation point language of its interconnection agreement with BellSouth instead of revised language that was inadvertently included in a security agreement Covad signed. According to Covad, BellSouth refused to allow it to amend its interconnection agreement which forced Covad to search out another agreement to opt into. Covad maintains that it eventually opted into another carrier's agreement because that carrier had opted into Covad's original collocation agreement. Covad notes, however, that each process of adopting an existing agreement took a number of weeks. Covad maintains that the entire process was a tremendous waste of time, money and resources.²³⁴

(d) The Position of ITC DeltaCom

ITC DeltaCom maintains that BellSouth has failed to provide collocation in compliance with Checklist Item 1 on rates, terms and conditions that are just, reasonable and non-discriminatory. In particular, ITC DeltaCom maintains that BellSouth's provisioning intervals for collocation are unacceptable for both physically

²³² Tr. p. 2595 (*Turner*).

²³³ Tr. p. 2598 (*Turner*).

enclosed collocation and cageless collocation. ITC DeltaCom maintains that as represented in its Exhibit 21 introduced at hearing, its request for cageless collocation space at the Huntsville-Lakewood central office of BellSouth took from May of 1999 to November of 1999. ITC DeltaCom further maintains that if it simply wants to augment an existing collocation site by adding HDSL, the timeframe is “ridiculous.”²³⁵

As another example of BellSouth’s failure to provide collocation in compliance with Checklist Item 1, ITC DeltaCom maintains that an augment for its Florence-Main collocation site was quoted at \$7,602 with an estimated interval of 120 days. ITC DeltaCom maintains that it put in the application on June 1, 2000 and accepted the space on November 13, 2000. ITC DeltaCom asserts that BellSouth has provided no evidence to back up its claim that it completed the collocations referenced by DeltaCom in a shorter interval than reflected in ITC DeltaCom Exhibit 21.

ITC DeltaCom further maintains that BellSouth has not supported its contention that it met all but two of its estimated intervals with regard to the collocations reflected in ITC DeltaCom Exhibit 21. ITC DeltaCom concedes that completion dates are utilized in determining provisioning intervals, but points out that BellSouth did not provide those dates. ITC DeltaCom thus disputes BellSouth’s claim that it completed the collocations requested by ITC DeltaCom, but ITC DeltaCom waited many months on the majority of the collocation sites to accept such spaces.

ITC DeltaCom also characterizes as “outrageous” the sum of BellSouth’s collocation charges and estimates. Further, ITC DeltaCom questions BellSouth’s decision to revise some of its prior estimates at significantly higher costs to ITC DeltaCom. ITC DeltaCom concludes that BellSouth has grossly mismanaged its collocation processes including, but not limited to, billing and provisioning.²³⁶

(e) The Position of WorldCom

(i) Methods of Interconnection

Much like AT&T, WorldCom takes the position that it has the right to choose the point of interconnection and that each party must bear the expense of transporting its traffic to the POI. WorldCom accordingly challenges BellSouth’s view that CLECs must bear the expense of transporting BellSouth’s originating traffic when the POI is not in

²³⁴ Tr. pp. 5366-5367 (*Allen*).

²³⁵ ITC DeltaCom Post Hearing Brief at p. 8.

the same local calling area as the BellSouth customer who originates the call. WorldCom argues that BellSouth's position cannot be squared with the Act. More particularly, WorldCom argues that the Act, as interpreted by the FCC, permits CLECs to choose the POI or POIs regardless of which party originates the traffic. WorldCom further argues that prevailing law prohibits a carrier from assessing charges on other carriers for traffic originating on that carrier's network.²³⁷

(ii) Nondiscriminatory Access to Interconnection Trunks

WorldCom also disputes BellSouth's contention that it should be allowed to "fragment" interconnection traffic by separating local and intraLATA toll traffic from local transit traffic. WorldCom maintains that it is often more efficient to transport these different types of traffic together rather than separately. WorldCom notes that BellSouth has acknowledged that it has trunks that are capable of carrying local, intraLATA, and transit traffic together. Because these types of traffic are rated differently, however, BellSouth maintains that the receiving carrier would either have to have a way to discern the jurisdiction of the traffic or have to rely on reporting by a sending carrier via a percent local usage (PLU) or similar reporting mechanism.²³⁸

WorldCom asserts that when BellSouth has super group trunks available that are capable of carrying local, intraLATA toll, and transit traffic on the same trunk group, it is unjust and unreasonable for BellSouth to insist on using a less efficient form of interconnection that fragments such traffic. WorldCom asserts that the inefficiencies related to such a policy decision translates into unnecessary, increased costs for CLECs who interconnect with BellSouth. WorldCom thus asserts that BellSouth should be required to exchange local, intraLATA toll, and transit traffic with a CLEC over a single trunk group.²³⁹

WorldCom further disputes BellSouth's policy of prohibiting CLECs from sending access traffic directly to BellSouth end offices using interconnection trunks. WorldCom maintains that this policy prevents CLECs from competing with BellSouth for the provision of exchange access traffic. WorldCom asserts that if CLECs could transport exchange access traffic directly to a BellSouth end office via interconnection trunks,

²³⁶ ITC DeltaCom Post Hearing Brief at p. 10.

²³⁷ WorldCom Post Hearing Brief p. 22 [*Citing* Tr. p. 3492-3497 (*Argenbright*); Tr. p. 315-329 (*Ruscilli*)].

²³⁸ WorldCom Post Hearing Brief pp. 22-23 [*Citing* Tr. p. 3497-3499 (*Argenbright*)].

²³⁹ *Id.*

such CLECs could offer a tandem access service to interexchange carriers (IXCs) enabling IXCs to have a choice in tandem providers. WorldCom would then charge the IXCs for tandem and transport service and BellSouth would charge for end office switching. WorldCom maintains that if, as BellSouth contends, CLECs must transport exchange access to the BellSouth access tandem, BellSouth would be entitled to provide, and charge for, tandem switching, transport and end office switching, thus denying CLECs any way to compete with BellSouth for tandem provider services. WorldCom thus asserts that BellSouth should be required to change its policy before it is found to be in compliance with Checklist Item 1.²⁴⁰

WorldCom further disputes BellSouth's position that it will provide two-way trunking upon request, but it is generally under no obligation to use the two-way trunks. WorldCom asserts that when BellSouth provides two-way trunks without using them, it effectively turns the two-way trunks into one-way trunks denying the CLEC the efficiencies that two-way trunks afford. WorldCom asserts that the applicable FCC rule provides that "[i]f technically feasible, an incumbent LEC shall provide two-way trunking upon request."²⁴¹ WorldCom asserts that BellSouth does not as a practical matter provide two-way trunking when it refuses to use such trunks for its own traffic. WorldCom argues that BellSouth should be required to change its policy concerning two-way trunking before it is found to be compliant with Checklist Item 1.²⁴²

(iii) **Collocation**

WorldCom also argues that BellSouth has not met the requirements of the Act with regard to collocation, particularly with regard to its collocation provisioning intervals. WorldCom specifically argues that BellSouth should be required to provision caged collocation spaces in 90 calendar days.²⁴³

WorldCom further argues that BellSouth does not provision cageless collocation within the 60 calendar day time period established by the Commission in the *ITC DeltaCom/BellSouth Arbitration*.²⁴⁴ WorldCom argues that the intent of the Commission's *ITC DeltaCom/BellSouth Arbitration Order* was for BellSouth to provision

²⁴⁰ WorldCom Post Hearing Brief p. 23 [*Citing* Tr. pp. 3499-3502 (*Argenbright*); Tr. pp. 329-333 (*Ruscilli*)].

²⁴¹ WorldCom Post Hearing Brief p. 24 [*Citing* 47 CFR §51.305(f)].

²⁴² *Id.* [*Citing* Tr. pp. 3502-3503; Tr. pp. 333-345 (*Ruscilli*)].

²⁴³ WorldCom Post Hearing Brief at p. 26.

cageless collocation within a 60 day period (absent extenuating circumstances) commencing with the application for the space in question. WorldCom states that BellSouth's position that the provisioning interval for cageless collocation commences from the receipt by BellSouth of a firm order for such space is in conflict with the Commission's order.²⁴⁵ WorldCom maintains that this 60 day cageless collocation provisioning interval should apply to all CLECs and to virtual collocation requests.

WorldCom further maintains that BellSouth's proposal for a 23 business day interval following an application within which it will provide the amount needed for space preparation is unacceptable (i.e. cost quote). WorldCom maintains that there is no evidence to demonstrate that BellSouth cannot meet a shortened interval as has been required by other Public Service Commissions such as Texas and Florida. WorldCom recommends that BellSouth be required to provide a firm cost quote within 15 days of receiving a collocation application.²⁴⁶

WorldCom also maintains that BellSouth's decision not to provide DC power to CLEC equipment collocated in adjacent collocation creates an opportunity for discrimination against CLECs. WorldCom points out that collocated equipment runs on DC power, but BellSouth categorically states that the cabling used to provide DC power is not rated for outside use. WorldCom asserts that BellSouth uses those safety concerns to deny the provision of DC power to adjacent collocation space.

WorldCom asserts that the opportunity for discrimination against CLECs is particularly acute with regard to the provision of power to adjacent collocation space because such arrangements come into play only when BellSouth central offices are legitimately exhausted. According to WorldCom, it is BellSouth's position that space can be exhausted if BellSouth occupies or reserves space, even for functions unrelated to the functioning of the central office or collocators. If BellSouth categorically refuses to provide DC power, a CLEC must incur significant cost to accommodate AC power, provided by BellSouth or from some other source, and convert that power to DC. WorldCom maintains that because of BellSouth's decision not to provide DC power to

²⁴⁴ Tr. pp. 3441-3453 (*Bomer*); *In the Matter of the Petition by ITC DeltaCom Communications, Inc. for Arbitration of Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to §252(b) of the Telecommunications Act of 1996*, Docket 27091, Final Order on Arbitration (September 27, 2000) ("*ITC DeltaCom/BellSouth Arbitration Order*").

²⁴⁵ *Id.* at p. 3443.

²⁴⁶ *Id.* Tr. pp. 3450-3451 (*Bomer*).

adjacent collocation space, CLECs have to employ generators, batteries and other equipment in order to provide collocation from adjacent locations.²⁴⁷

WorldCom further argues that even if BellSouth's contentions regarding safety with regard to adjacent DC power were generally valid, the principle of "technical feasibility" by which requests for physical collocation are considered strongly suggests that DC power cannot be categorically denied. WorldCom in fact maintains that BellSouth's position creates the safety concerns which BellSouth claims to be avoiding. WorldCom also contends that the national electric codes mention no prohibitions concerning the provision of DC power to adjacent collocation sites.²⁴⁸

WorldCom maintains that BellSouth's refusal to provide CLECs with DC power to adjacent collocation arrangements is discriminatory because BellSouth offers CLECs DC power at remote terminal collocation sites in other jurisdictions such as North Carolina. WorldCom further argues that the state Commission's in Georgia, Florida and Texas have ordered incumbent LECs to provide DC power to adjacent collocation sites where technically feasible.

WorldCom also notes that the FCC rules require BellSouth to provide power and physical collocation services to adjacent collocation space "subject to the same non-discrimination requirement as applicable to any other physical collocation arrangement."²⁴⁹ WorldCom submits that prevailing law requires adjacent collocation to be provided in a non-discriminatory manner and asserts that there is no demonstrable or compelling reason why DC power should not be provided to CLECs by BellSouth.²⁵⁰

WorldCom further challenges BellSouth's refusal to allow CLECs to verify that dual (diverse) entrances do not exist to collocation spaces. WorldCom's position is that it should be permitted to verify BellSouth's assertions that dual entrance facilities are not available and that BellSouth should maintain a waiting list for entrance space and notify CLECs when space becomes available. WorldCom maintains that this is a reasonable requirement in light of the FCC's similar, but even more expansive rule of allowing new entrants to tour an incumbent's premises in order to verify an ILEC assertion that

²⁴⁷ Tr. pp. 3453-3454 (*Bomer*).

²⁴⁸ *Id.*

²⁴⁹ Tr. pp. 3455-3459 (*Bomer*); 47 CFR §51.323(k)(3).

²⁵⁰ *Id.*

physical collocation space is not available.²⁵¹ WorldCom maintains that CLECs should similarly be allowed to verify a claim that dual entrances are not available.²⁵²

WorldCom further challenges BellSouth's decision to allocate the cost of security card key system installations at collocation sites on a per capita basis regardless of the amount of space occupied. WorldCom maintains that if BellSouth is to recover costs for security, it should do so pro-rata on a per square foot basis across all usable space in the premises.

WorldCom reasons that BellSouth installs card reader systems because it has chosen to protect the equipment for which it is financially responsible, not to protect the equipment of collocators. WorldCom further points out that in central offices with existing security systems, BellSouth incurs no incremental expense in the installation of card reader systems and the assessment of security charges in these offices constitutes a windfall for BellSouth.

WorldCom further argues that there is an issue as to whether there should be any cost recovery whatsoever by BellSouth with regard to the installation of card key systems. To the extent that collocators and BellSouth benefit from such systems, WorldCom asserts that a reasonable allocation for the cost which bears some relationship to the benefits derived by each parties is the appropriate methodology. WorldCom maintains that the per capita allocation of security cost proposed by BellSouth would assess all carriers the same charge regardless of the amount of space occupied. WorldCom asserts that this methodology is arbitrary because it fails to recognize that BellSouth chooses to incur the costs in question and bears no relationship to the different level of benefits derived by each carrier from a security system. WorldCom thus contends that BellSouth's proposed methodology is not just, reasonable and non-discriminatory.²⁵³

WorldCom further challenges BellSouth's decision to impose nonrecurring charges for applications and for "firm order processing." WorldCom asserts that in some cases, it receives bills from BellSouth which are many times more than the amount BellSouth "estimated" in its initial bills. WorldCom asserts that BellSouth's

²⁵¹ Tr. pp. 3459-3460 (*Bomer*); 47 CFR §51.321(f).

²⁵² *Id.*

²⁵³ Tr. pp. 3463-3466 (*Bomer*).

practices in this regard suggest that BellSouth has little, if any, understanding or regard for commercial certainty or custom.²⁵⁴

(e) BellSouth's Rebuttal Arguments

(i) Methods of Interconnection - Point of Interconnection

With regard to the arguments presented by AT&T and WorldCom concerning POI, BellSouth maintains that the FCC has expressly rejected such arguments as a basis for a finding of noncompliance with Checklist Item 1.²⁵⁵ BellSouth, therefore urges the Commission to conclude that the POI issue is not one appropriate for consideration in a §271 hearing, but would be more appropriately addressed separately through arbitration proceedings.²⁵⁶

(ii) Nondiscriminatory Access to Interconnection Trunks

BellSouth maintains that the trunk group blocking reports posted on its web site and referenced by several CLECs are not meaningful. BellSouth first maintains that the trunk group blocking reports upon which the CLECs rely assume that all trunk groups are the same size. BellSouth maintains that because trunk groups actually vary in size, the percentage of trunk groups experiencing blocking does not accurately reflect the experience of end users. Secondly, BellSouth maintains that the CLEC trunk blocking reports relied upon by the CLECs do not differentiate between blocking caused by BellSouth and blocking caused by CLECs.

At any rate, BellSouth maintains that it now reports the average number of blocked calls providing a more accurate indication of end user experience. BellSouth contends that its new trunk blockage reports also account for CLEC-caused problems and thus provide a more accurate gauge of BellSouth's performance.²⁵⁷

With regard to AT&T's allegations that BellSouth does not properly augment trunks as needed to handle increased traffic, BellSouth maintains that its performance data belies AT&T's claim in this regard. BellSouth further asserts that the evidence shows that many shortcomings in trunk augmentation are due to poor forecasting by CLECs, or to the failure of CLECs to inform BellSouth about expected spikes in traffic. BellSouth maintains that trunk forecasting involves a dialog meant to support a common

²⁵⁴ Tr. pp. 3466-3467 (*Bomer*).

²⁵⁵ BellSouth Post Hearing Brief p. 48 [*Citing Verizon Pennsylvania Order*, 16 FCC Rcd. at 17419, ¶100, note 341; Tr. pp. 188-199 (*Ruscilli*)].

²⁵⁶ *Id.* [*Citing SWBT Kansas/Oklahoma Order* ¶239].

understanding of, and expectations for, planned servicing of trunks. BellSouth maintains, however, that many CLECs such as AT&T have declined to participate in the trunk forecasting process and have failed to introduce evidence rebutting BellSouth's contention in this regard. BellSouth thus alleges that the trunk blockage arising from the failure of the CLECs to properly utilize trunk forecasting procedures does not constitute non-compliance with Checklist Item 1.²⁵⁸

BellSouth further argues that many of the delays in trunk augmentation alleged by AT&T are attributable to AT&T and relate to AT&T's failure to provide timely Firm Order Confirmations on reciprocal trunk orders; its failure to provide accurate Connecting Facility Assignment ("CFA") information; and its failure to revise due dates when AT&T delays BellSouth due to FOC or CFA issues. BellSouth maintains that it has demonstrated on the record that it has attempted to meet with AT&T to address these issues, but AT&T has been unavailable. BellSouth thus urges the Commission to conclude that the delays in question are attributable to CLECs and thus are not cause for a finding of checklist noncompliance.²⁵⁹

In response to AT&T's allegations of its difficulties in obtaining trunk repair service from BellSouth, BellSouth maintains that AT&T twice submitted a trouble ticket for the wrong trunk group. When BellSouth addressed the first trouble ticket, AT&T reported the "problem fixed" even when that was not the case. When BellSouth and AT&T isolated the source of the trouble condition, BellSouth maintains that it resolved the problem by 9:00 a.m. on April 4, 2001, less than one day after the trouble was first correctly reported. BellSouth maintains that its performance in this regard was fully responsive.²⁶⁰

BellSouth counters AT&T's claims that BellSouth performs unannounced trunk disconnection for trunks with low utilization by maintaining that it contacts CLECs to determine anticipated traffic levels before disconnecting trunks due to low usage. BellSouth maintains that if the capacity is unneeded, it negotiates with the CLECs for a disconnect date. BellSouth also points out that it permits CLECs to submit a "binding forecast" which commits the CLEC's to purchase, and BellSouth to provide, a specified

²⁵⁷ Tr. pp. 1556-1565 (*Milner*).

²⁵⁸ BellSouth Post Hearing Brief at p. 50 [*Citing* Tr. pp. 1465-1468 (*Milner*)].

²⁵⁹ BellSouth Post Hearing Brief at p. 51 [*Citing* Tr. pp. 1460-1461 (*Milner*)].

²⁶⁰ *Id.* at p. 51 [*Citing* Tr. pp. 1468-1469 (*Milner*)].

volume of trunks regardless of the volume on such trunks. BellSouth contends that such network management is an appropriate measure to utilize network resources efficiently.²⁶¹

With regard to WorldCom's assertions that BellSouth should allow CLECs to use interconnection trunks to send access traffic to BellSouth end offices, BellSouth maintains that the handling of switched access traffic is governed pursuant to switched access tariffs. BellSouth maintains that if CLECs delivered terminating switched access traffic to BellSouth end offices over local interconnection trunks, BellSouth would not have the necessary information to accurately bill for its services. BellSouth maintains that its approach concerning switched access traffic meets the obligations of §271.²⁶²

BellSouth counters WorldCom's assertion that BellSouth should be required to use the two way trunks that it provides to CLECs with the argument that the FCC's rules require incumbent LECs to provide two way trunking upon request only where it is technically feasible to do so. BellSouth maintains that pursuant to the FCC's *Local Competition Order*, it must provide two way trunking where the CLEC does not have sufficient traffic to justify the use of separate one way trunks and two way trunking is technically feasible. BellSouth thus maintains that its conduct satisfies its obligations under the FCC's rules.²⁶³

(iii) Collocation

In response to the concerns raised by AT&T regarding BellSouth's collocation handbook, BellSouth points out that the terms and conditions it offers relative to collocation are governed by interconnection agreements which are reviewed and approved by the Commission and may not be "unilaterally" changed by BellSouth or a CLEC. BellSouth points out that in addition to its interconnection agreements and its SGAT, BellSouth has also submitted a collocation tariff. BellSouth maintains that all of those documents set forth BellSouth's legally binding obligations with respect to physical and virtual collocation. BellSouth stresses that it has not relied upon its collocation handbook as evidence of its legally binding obligation to provide collocation.²⁶⁴

²⁶¹ *Id.* at p. 51 [*Citing* Tr. pp. 1459-1460 (*Milner*)].

²⁶² *Id.* at p. 49 [*Citing* Tr. pp. 199-200 (*Ruscilli*)].

²⁶³ BellSouth Post Hearing Brief at p. 50 [*Citing* 47 CFR §51.305(f)].

²⁶⁴ *Id.* at p. 54 [*Citing* Tr. pp. 1618-1631 (*Gray*) and Tr. p. 2664 (*Turner*)].

With regard to AT&T's allegations that BellSouth might place collocation space for CLECs as far as possible from interconnection frames to increase the collocation costs of CLECs, BellSouth submits that its procedure for the reservation of space was developed pursuant to rights granted under FCC rules. BellSouth in fact maintains that the same space reservation rights available to it are also available to CLECs on a nondiscriminatory basis.

BellSouth also points out that AT&T witness Turner conceded that he did not visit a single central office, inspect a single collocation arrangement or review a single BellSouth floor plan in support of his allegations of inappropriate collocation spacing. BellSouth maintains that such unsubstantiated conjecture does not support a finding of checklist noncompliance.²⁶⁵

In response to AT&T's claims that BellSouth fails to offer off-site adjacent collocation, BellSouth notes that AT&T witness Turner concedes that the FCC rules do not explicitly require off-site adjacent collocation. BellSouth notes, however, that it does provide on-site adjacent collocation space when its premises are legitimately exhausted in satisfaction of the FCC's requirements.²⁶⁶

BellSouth counters AT&T's arguments that BellSouth fails to offer shared collocation in accordance with the FCC's *Advanced Services Order* by maintaining that it indeed provides shared collocation by contracting with a "host" CLEC which in turn contracts directly with other "guest" CLECs to share the collocation cage. BellSouth thus asserts that it fully complies with its shared collocation obligations.²⁶⁷

In response to AT&T's assertions that it is double recovering its costs of providing DC power, BellSouth maintains that there have historically been two power related physical collocation charges: A recurring power rate and individual case basis nonrecurring power construction charge. BellSouth maintains that these two charges are separate with each addressing different costs. Nonetheless, BellSouth indicates that it now offers a standard recurring power rate that includes both the "old recurring power rate and an incremental recurring amount to recover the nonrecurring power construction charges." BellSouth asserts that said rate is based on forward looking,

²⁶⁵ BellSouth Post Hearing Brief at p. 55 [*Citing* Tr. pp. 1655-1657 (*Gray*)].

²⁶⁶ *Id.* at p. 55 [*Citing* Tr. pp. 2597-2598 (*Turner*), [Tr. pp. 1663-1668 (*Gray*)].

²⁶⁷ *Id.* [*Citing* Tr. pp. 1659-1662 (*Gray*)].

long run, incremental costs. Based on the foregoing, BellSouth maintains that it is not, nor has it ever, been double recovering its DC power costs.²⁶⁸

In response to CLEC complaints regarding BellSouth's charges for physical collocation, BellSouth asserts that its current space preparation rate structure is consistent with Total Element Long Run Incremental Cost (TELRIC) principles. BellSouth maintains that its rate structure is included in its standard interconnection agreement and several signed interconnection agreements. BellSouth further asserts that if it is necessary to perform a major renovation or upgrade to a central office in Alabama to accommodate physical collocation, it is allowed to require collocators to share in the costs of such renovations or upgrades. BellSouth also points out that these issues were being specifically considered in Docket 27821.²⁶⁹

BellSouth counters ITC DeltaCom's allegations that BellSouth's central offices have excessive application response and provisioning intervals for collocation by pointing out that ITC DeltaCom's allegations are based on data from a period of time during which there was no federal or state application response and provisioning intervals in effect for collocation. BellSouth points out that the applications discussed by ITC DeltaCom were, in fact, among the first applications for collocation in Alabama and constituted a new way of doing business for BellSouth in Alabama. BellSouth further points out that ITC DeltaCom's provisioning calculations rely on space acceptance dates which can come days, weeks or even months after collocation is finished, depending upon when the CLEC examines and accepts the space. BellSouth thus concludes that the data introduced by ITC DeltaCom does not warrant a finding of noncompliance with the collocation obligations of Checklist Item 1.²⁷⁰

With regard to WorldCom's concerns about DC power and adjacent collocation space, BellSouth points out that the FCC rules do not require BellSouth to provide DC power to adjacent collocation arrangements. To the contrary, BellSouth asserts that an ILEC "may have a legitimate reason to exercise some measure of control over design or construction parameters" including the imposition of "reasonable safety and maintenance requirements." BellSouth maintains that its DC power restrictions are a

²⁶⁸ *Id.* at p. 56 [*Citing* Tr. pp. 1644-1647 (*Gray*)].

²⁶⁹ BellSouth Post Hearing Brief at p. 56 [*Citing* Tr. pp. 1632-1644, 1684-1691 (*Gray*)].

²⁷⁰ BellSouth Post Hearing Brief at p. 54 [*Citing* Tr. pp. 1664-1674, 1694-1695 (*Gray*)].

reasonable safety requirement permitted under the FCC's rules and contends that it faces the same power limitations in its own adjacent collocation space.²⁷¹

Concerning WorldCom's argument that BellSouth does not want CLECs to be able to verify the existence of dual entrance facilities, BellSouth concedes that it is required to provide at least two interconnection points at a premises "at which there are at least two entry points for the incumbent LEC's cable facilities and at which space is available for new facilities in at least two of those entry points."²⁷² However, BellSouth disputes WorldCom's contention that in cases in which BellSouth can only provide a single entrance point, WorldCom is entitled to a tour of the central office to verify that dual entrance facilities do not exist. BellSouth maintains that WorldCom's position is not substantiated by the FCC's rule which only require a tour of a collocation premises when incumbent LECs contend that space for physical collocation is not available.²⁷³ Because BellSouth is not denying physical collocation in cases in which BellSouth can only offer a single entrance facility, BellSouth maintains that it is not obligated to conduct a formal tour.

BellSouth points out, however, that it will provide CLECs information as to whether there is more than one entrance point for BellSouth and CLEC cable facilities. BellSouth further points out that it will provide CLECs with a tour of the cable vault to allow them to verify the lack of dual entrance facilities. In the event that dual entrance points exist but space is not available, BellSouth represents that it will upon request, and at the CLEC's expense, provide documentation so that the CLEC can verify that no space is available for the CLEC's facilities.²⁷⁴ With regard to WorldCom's request for a waiting list of CLECs who want access to dual facilities, BellSouth maintains that it is under no requirement to compile such a list. BellSouth in fact contends that creating and maintaining such a waiting list would be unnecessarily burdensome on BellSouth.²⁷⁵

BellSouth surmises that it makes dual entrance facilities available to CLECs in compliance with its obligations under the FCC's rules.²⁷⁶ BellSouth contends that

²⁷¹ BellSouth Post Hearing Brief at p. 53 [*Citing* Tr. pp. 1452-1455 (*Milner*); the FCC's *Advanced Services Order*, 4786].

²⁷² *Id.* [*Citing* 47 CFR §51.323(d)(2)].

²⁷³ *Id.* [*Citing* 47 CFR §51.321(f)].

²⁷⁴ Tr. pp. 1451 (*Milner*).

²⁷⁵ Tr. p. 1452 (*Milner*).

²⁷⁶ [*Citing* 47 CFR 51.323(d)(2)].

WorldCom's complaints concerning dual entrance facilities skirt the edges of the FCC's rules and, therefore, do not reflect that BellSouth has failed to fulfill its obligations concerning dual entrance facilities for §271 purposes.

With regard to WorldCom's suggestion that the Commission establish physical cageless collocation intervals for BellSouth that are shorter than the intervals for provisioning physical caged and virtual collocation, BellSouth maintains that this is not a §271 issue. BellSouth points out that the Commission has thus far only established physical cageless collocation provisioning intervals and BellSouth provisions collocation within those timeframes and the timeframes established by the FCC. Consequently, BellSouth asserts that it is meeting its collocation interval obligations.²⁷⁷

In response to Covad's criticisms concerning BellSouth's position with respect to the location of the demarcation point for Covad's collocation arrangements, BellSouth points out that the FCC's *Advanced Services Order* modified the requirements governing collocation demarcation points. In response to that modification, BellSouth maintains that it sought to modify its interconnection agreements. BellSouth asserts that Covad agreed to an amendment eliminating the provision permitting the demarcation point at the POT Bay, but subsequently sought to restore that original provision. BellSouth maintains that had it agreed to Covad's request, all CLECs could then have opted into Covad's agreement thereby undermining BellSouth's efforts to respond to the FCC's Order. BellSouth thus asserts that its rejection of Covad's proposed amendment does not demonstrate noncompliance with Checklist Item 1.²⁷⁸

(f) The Determination of the Commission

(i) Methods of Interconnection – Point of Interconnection

To summarize the positions of the respective parties with respect to the issues concerning Points of Interconnection, AT&T and WorldCom contend that in most instances where an intraLATA call that a BellSouth customer originates passes outside a BellSouth defined basic local calling area for completion to a CLEC customer, BellSouth requires the CLEC to implement a point of interconnection (POI) in the BellSouth Local calling area of the originating BellSouth customer. This is required by BellSouth even though the CLEC may have established its POI elsewhere within the

²⁷⁷ *Id.* at pp. 53-54 [*Citing* Tr. pp. 1669-1684 (*Gray*)].

²⁷⁸ *Id.* at p. 53 [*Citing* Tr. pp. 5664-5667 (*Gray*)].

LATA. Absent the establishment of an additional POI, AT&T and WorldCom contend that BellSouth requires the CLEC to pay for the transport of the call to the CLEC's already established POI.

AT&T and WorldCom assert that the FCC's rules permit CLECs to interconnect at any technically feasible point within BellSouth's network and prohibit ILECs from requiring CLECs to interconnect at more than one point within a LATA unless the CLEC chooses to do so. AT&T and WorldCom thus contend that any ILEC action which interferes with these rights, including financial penalties of the nature that BellSouth attempts to impose for not mirroring its network, are prohibited.

BellSouth correctly notes in response to the allegations of AT&T and WorldCom, that the FCC concluded in the *Verizon-Pennsylvania Order* that the point of interconnection issue is not a basis for finding noncompliance with Checklist Item 1. Specifically, the FCC held that so long as the incumbent LEC permits CLECs to physically interconnect at a single point of interconnection, the fact that there may be issues of allocation of financial responsibility for interconnection facilities does not preclude §271 compliance. The FCC noted that such issues of financial responsibility are under consideration in the FCC's *Intercarrier Compensation NPRM*.²⁷⁹ The FCC reaffirmed the above conclusions regarding POI issues in its recent *Georgia/Louisiana Order*.²⁸⁰

It appears from the foregoing that the issues raised in this proceeding concerning the establishment of points of interconnection should not be an impediment to BellSouth's compliance with this checklist item. The FCC clearly indicated in the *Georgia/Louisiana Order* its intention to only deal with *per se* violations of §271 in §271 proceedings. Since BellSouth allows the physical interconnection at a single POI, the additional issues raised concerning POIs should be dealt with outside the context of this §271 proceeding.

(ii) Interconnection Trunks

Trunk Blockage

As noted in the foregoing discussions, AT&T, Covad, and US LEC (through cross-examination) allege that according to BellSouth's own Trunk Group Service

²⁷⁹ *Verizon-Pennsylvania Order*, 16 FCC Rcd. at 17419, ¶100.

²⁸⁰ *Georgia/Louisiana Order* at ¶208.

Reports (“TGSRs”), BellSouth has experienced levels of trunk blockage which far exceed that found unsatisfactory in the FCC’s *Second Louisiana Order*. In particular, the CLECs allege that the CLEC trunk blockage in Alabama for January 2001 was 444% greater than the trunk blockage percentage experienced by BellSouth’s retail trunk groups; 596% greater in February 2001; 557% greater in March 2001; and 727% greater in April 2001.

BellSouth dismisses the TGSRs posted on its website which were utilized by the CLECs to develop their blocking percentages because BellSouth alleges that those reports do not differentiate for trunk sizes or blocking caused by CLECs. BellSouth contends that its new Trunk Group Performance (“TGP”) reports better reflect the average number of calls blocked and account for CLEC caused blocking. The CLECs, on the other hand, contend that BellSouth’s new TGP methodology masks poor performance.

The Commission initially afforded great weight to the CLEC blocking arguments which were based on BellSouth’s own TGSRs because the analysis engaged in by the CLECs appeared to be more consistent with the blocking analysis previously endorsed by the FCC in its *Second Louisiana Order*. The Commission was, however, forced to reevaluate that position when the FCC, in its *Georgia/Louisiana Order*, rejected CLEC challenges to the validity of BellSouth’s TGP report which were virtually identical to the challenges raised in this jurisdiction.²⁸¹ In particular, the FCC concluded that BellSouth’s TGP report “effectively assesses” BellSouth’s trunk blockage performance based on the same points raised by BellSouth in this jurisdiction in support of its TGP report.²⁸² Given the fact that BellSouth’s recently endorsed TGP report reflects that BellSouth has performed acceptably with respect to trunk blockage for the months of June, July, August, and September, 2001, we are of the opinion that BellSouth has satisfactorily rebutted the CLEC claims of unacceptable levels of trunk blockage.²⁸³

AT&T and Covad also allege that BellSouth’s policy for augmenting trunks to handle increased traffic is deficient and contributes to CLEC trunk blockage. AT&T similarly alleges that BellSouth sometimes disconnects, without warning, trunks which it determines to be underutilized. We find, however, that BellSouth has satisfactorily

²⁸¹ *Georgia/Louisiana Order* at ¶202.

²⁸² *Id.* at ¶203.

rebutted the CLEC arguments regarding trunk augmentation with its counter allegations that CLECs do not sufficiently forecast their traffic. Similarly, BellSouth has satisfactorily rebutted the CLEC claims that it improperly disconnects trunks with low utilization by noting its practice of contacting CLECs prior to disconnection to coordinate disconnect dates. Further, BellSouth correctly points out that its offer of “binding forecast” provisions provides a method for minimizing issues concerning underutilized trunks and traffic spikes.²⁸⁴

We accordingly conclude that BellSouth complies with its interconnection trunking obligations and has introduced performance data demonstrating this for Alabama. In particular, BellSouth’s performance data for September 2001 reflect that for September 2001, BellSouth met every interconnection trunking metric for Alabama for which there was CLEC activity except one.²⁸⁵

The Arguments of WorldCom

WorldCom essentially argues that BellSouth is in noncompliance with Checklist Item 1 due to the fact that: (1) BellSouth requires CLECs to segregate local, intraLATA toll and transit traffic onto separate trunk groups; (2) BellSouth inappropriately requires CLECs that are providing terminating access service for IXCs to route such calls to access tandems; and (3) BellSouth fails to provide and use two-way trunking at WorldCom’s request.

BellSouth asserts, in response to WorldCom’s allegations regarding the segregation of traffic, that WorldCom’s concerns are resolved by its “super group” trunking alternative. WorldCom’s testimony indicates, however, that BellSouth nonetheless fragments traffic even when super trunk groups capable of carrying local, intraLATA toll and transit traffic are available because BellSouth will not appropriately route traffic over them.

BellSouth responds to WorldCom’s claims that it should be allowed to terminate switched access traffic to BellSouth end offices over local interconnection trunks with the argument that BellSouth would not have the necessary information to bill for its services if such a practice were allowed because call records do not contain the

²⁸³ See Item C.5.1 as reported in BellSouth Exhibits 350, 351, and 352.

²⁸⁴ Tr. p. 1465-1468 (*Milner*).

²⁸⁵ BellSouth Exhibit 352.

information necessary to allow BellSouth to distinguish access traffic from local traffic. BellSouth maintains that such a scenario would require self-reporting by the CLECs with respect to their usage.

In response to WorldCom's claims that BellSouth should be required to provide and use two-way trunking at WorldCom's request, BellSouth contends that it complies with its obligations pursuant to the FCC's *Local Competition Order* by providing two-way trunking where the CLEC in question does not have sufficient traffic to justify the use of separate one-way trunks and two-way trunking is technically feasible. BellSouth does not however, address the issue of whether it actually utilizes such two-way trunking.

Upon further review of the arguments raised by WorldCom, it appears that BellSouth provides WorldCom with the trunking facilities it requests. The real issue seems to center around the utilization of the facilities in question. There does not, however, appear to be a *per se* violation of self executing provisions of the Act. The FCC has held that issues which do not involve *per se* 271 violations are more appropriately considered in the context of other proceedings.²⁸⁶ Although it appears that WorldCom has raised issues which should be addressed, those issues would be more appropriately addressed in an arbitration or complaint proceeding.

(iii) Collocation

We note that the majority of the collocation issues raised by the CLECs in this proceeding have already been addressed by the Commission in an Order entered in Docket 28089 on March 11, 2002. That Order rejected BellSouth's collocation tariff as filed with the Commission, but instructed BellSouth to refile said tariff with the revisions that were ordered by the Commission. BellSouth's refilled version of its collocation tariff became effective on June 11, 2002.

The most contentious issue in the proceedings conducted pursuant to Docket 28089 concerned BellSouth's proposed collocation application response interval and BellSouth's collocation provisioning intervals generally. Notably, BellSouth proposed, in Docket 28089, collocation application response intervals and collocation provisioning intervals which mirrored those proposed in this proceeding.

²⁸⁶ *Georgia/Louisiana Order*, ¶208.

The Commission concluded in its March 11, 2002 Order in Docket 28089 that the application response and provisioning intervals proposed by BellSouth were reasonable and should be adopted with only limited exceptions. One of the limited exceptions imposed by the Commission is the requirement that BellSouth implement a thirty (30) day provisioning interval for cageless collocation requests in situations where BellSouth has preconditioned space available. Further, the Commission found that BellSouth should be required to establish a 15 day calendar day physical collocation application response interval in the event that the Commission establishes completely standardized collocation rates in the future. The Commission further clarified that all collocation provisioning intervals ordered and/or approved by the Commission do not commence until BellSouth receives a bona fide firm order for collocation space.

With regard to the provisioning of D.C. power to adjacent collocation spaces, the Commission found in its March 11, 2002 Order in Docket 28089 that BellSouth should be required to provision such arrangements when they are demonstrated to be technically feasible. The Commission noted that the definition of technically feasible encompasses compliance with all applicable electric safety standards. The Commission further specified that the pricing of any such DC power arrangements should be on an individual case basis.

The Commission's March 11, 2002 Order in Docket 28089 lastly concluded that BellSouth's collocation tariff should include a provision stating that CLECs have the option of obtaining power from an electric utility. BellSouth was also required to include provisions in its collocation tariff which allow CLECs connected to BellSouth's main power board to reconfigure their power arrangements in order to receive power from the battery distribution fuse bay. The Commission required BellSouth to respond to such applications within seven days and waive any application fees. The issues raised in this proceeding which were not addressed in the Commission's March 11, 2002 Order in Docket 28089 are addressed below.

In this proceeding, AT&T and Covad claim that BellSouth is double recovering for its D.C. power plant by charging CLECs a nonrecurring individual case basis charge for augments to the D.C. power plant and also charging collocators generally for the recurring costs to recover BellSouth's initial investment in the D.C. power plant. We find

that BellSouth has satisfactorily rebutted those assertions by stating that there have historically been two power related physical collocation charges - a recurring power rate and an individual case basis recurring power construction charge which each address different costs. Further, BellSouth indicates that it now offers a standard recurring power rate that includes both the old recurring power rate and an incremental recurring amount to recover the nonrecurring power construction charges.²⁸⁷

AT&T and Covad further allege that BellSouth might be incented to place collocation space for CLECs as far as possible from interconnection frames to increase collocation costs for CLECs. BellSouth successfully rebuts this concern by noting that its procedure for the reservation of space was developed pursuant to rights granted under the FCC's rules. Further the AT&T witness who raised this concern, Mr. Turner, testified that he did not visit a single central office, inspect a single collocation arrangement or view a single BellSouth floor plan in the BellSouth region prior to making his allegations.²⁸⁸

BellSouth also satisfactorily rebuts the claims of AT&T and Covad that it fails to offer offsite adjacent collocation by demonstrating that the FCC rules do not explicitly require such an arrangement. This fact was conceded by AT&T witness Turner who raised this allegation.²⁸⁹

BellSouth also successfully rebuts the argument of AT&T and Covad that it fails to offer shared collocation in accordance with the FCC's *Advance Services Order* by maintaining that it indeed provides shared collocation by contracting with a "house CLEC" which, in turn, contracts directly with other "guest CLECs" to share the collocation cage.²⁹⁰

BellSouth also successfully demonstrates that WorldCom's position that BellSouth should permit tours of central office facilities for purposes of verifying that dual entrance facilities do not exist is not substantiated by the FCC's rules. The same reasoning applies to WorldCom's contentions that BellSouth should compile a waiting list for CLECs who want access to dual facilities.²⁹¹

²⁸⁷ Tr. pp. 1644-1647 (*Gray*).

²⁸⁸ Tr. pp. 1655-1657 (*Gray*) and Tr. p. 2664 (*Turner*).

²⁸⁹ Tr. pp. 1663-1668 (*Gray*) and Tr. pp. 2597-2598, 2669 (*Turner*).

²⁹⁰ Tr. pp. 1659-1662 (*Gray*) and Tr. pp. 2595-2597 (*Turner*).

²⁹¹ Tr. pp. 1451-1452 (*Milner*).

In sum, BellSouth appears compliant with this checklist item where collocation issues are concerned. BellSouth's representation that it met every collocation submetric for every month for May through September 2001 in Alabama only strengthens the Commission's findings in this regard. Further, the fact that BellSouth now has a tariff which addresses the terms and conditions of its collocation offerings puts to rest the CLEC claims that BellSouth unilaterally controls the collocation process.

(iv) Conclusion

Based on the foregoing findings and conclusions, we find BellSouth compliant with this checklist item in all respects.

IT IS SO ORDERED BY THE COMMISSION.

3. Checklist Item 2: Nondiscriminatory Access to Network Elements in Accordance with the Requirements of §§251(c)(3) and 252(d)(1)

(a) The Requirements of the Act

Checklist Item 2²⁹² requires BellSouth to generally offer to other telecommunications carriers nondiscriminatory access to network elements in accordance with the requirements of §251(c)(3) and §252(d)(1). BellSouth is obligated by §251(c)(3) to provide nondiscriminatory access to network elements on an unbundled basis at any technically feasible point under rates, terms and conditions that are just and reasonable. Further, BellSouth must provide such unbundled network elements in a manner that allows requesting carriers to combine those elements in order to provide telecommunications service.

Section 252(d)(1) specifies that the rates for unbundled network elements will be considered just and reasonable only if they are based on the cost of providing the element in question and are nondiscriminatory. Such rates may include a reasonable profit.

For good reason, the FCC has largely focused its evaluation of this checklist item on whether the BOC in question provides access to its Operations Support Systems ("OSS") and to combinations of unbundled network elements ("UNEs") in accordance with §251(c)(3) and its rules.²⁹³ The FCC has consistently recognized that nondiscriminatory access to OSS is a prerequisite to the development of meaningful

²⁹² 47 U.S.C. §271(c)(2)(b)(ii).

²⁹³ *SWBT Texas Order* at ¶¶91-92.

competition. Without such nondiscriminatory access to a BOC's OSS, a competing carrier will "be severely disadvantaged, if not precluded altogether, from fairly competing" in the local exchange market.²⁹⁴

As part of its statutory obligation to provide nondiscriminatory access to OSS functions, a BOC must provide access that sufficiently supports each of the three modes of competitive entry envisioned by the 1996 Act – competitor-owned facilities, unbundled network elements and resale. For OSS functions that are analogous to those that a BOC provides to itself, its customers or its affiliates, the nondiscrimination standard requires the BOC to offer requesting carriers access that is equivalent in terms of quality, accuracy and timeliness. In short, the BOC must provide access that permits competing carriers to perform these functions in "substantially the same time and manner" as the BOC. The FCC has further recognized in prior orders that there may be situations in which a BOC contends that although equivalent access has not been achieved for an analogous function, the access that it provides is, nonetheless, nondiscriminatory within the meaning of the statute.²⁹⁵

For OSS functions that have no retail analog, the BOC must offer access that is "sufficient to allow an efficient competitor a meaningful opportunity to compete." In assessing whether the quality of access affords an efficient competitor a meaningful opportunity to compete, the inquiry is whether specific performance standards exist for the functions in question. In particular, the FCC has noted that it will consider whether appropriate standards for measuring OSS performance have been adopted by the relevant state Commission or agreed upon by the BOC in an interconnection agreement or during the implementation of such an agreement. If such performance standards exist, the FCC evaluates whether the BOC's performance is sufficient to allow an efficient competitor a meaningful opportunity to compete.²⁹⁶

The FCC has developed a two step approach for purposes of analyzing whether BOCs have met the nondiscrimination standard for each OSS function. The FCC has established that it must first determine "whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to

²⁹⁴ *Id.*

²⁹⁵ *Id.* at ¶94.

understand how to implement and use all the OSS functions available to them.” The FCC next assesses “whether the OSS functions that the BOC has deployed are operationally ready as a practical matter.”²⁹⁷

Under the first inquiry, a BOC must demonstrate that it has developed sufficient electronic and manual interfaces (electronic for functions that the BOC assesses electronically) to allow competing carriers equivalent access to all of the necessary OSS functions. For example, a BOC must provide competing carriers with the specifications necessary for carriers to design or modify their systems in a manner that will enable them to communicate with the BOC systems and any relevant interfaces. In addition, a BOC must disclose to competing carriers any internal business rules and other formatting information necessary to ensure that a carrier’s request and orders are processed efficiently. Finally, a BOC must demonstrate that its OSS is designed to accommodate both current demand and projected demand for competing carriers’ access to OSS functions.²⁹⁸ Although not a prerequisite, the FCC continues to encourage the use of industry standards as an appropriate means of meeting the needs of a competitive local exchange market.²⁹⁹

Under the secondary inquiry, the FCC examines performance measurements and other evidence of commercial readiness to ascertain whether the BOC’s OSS is handling current demand and will be able to handle reasonably foreseeable future volumes. The most probative evidence that OSS functions are operationally ready is actual commercial usage. Absent sufficient, reliable data on commercial usage, the FCC will consider the results of carrier to carrier testing, independent third party testing, and internal testing in assessing the commercial readiness of a BOC’s OSS. Although the FCC does not require OSS testing, a persuasive test will provide an objective means by which to evaluate a BOC’s OSS readiness where there is little to no evidence of commercial usage. Persuasive OSS test results may also strengthen an application where the BOC’s evidence of actual commercial usage is weak or is otherwise challenged by competitors. The persuasiveness of a third party review, however, is dependent upon the qualifications, experience and independence of the third party and

²⁹⁶ *Id.* at ¶95.

²⁹⁷ *Id.* at ¶96.

²⁹⁸ The FCC has noted that it looks to the totality of the circumstances in evaluating OSS performance rather than focusing on isolated problems, *SWBT Kansas/Oklahoma Order* at ¶138.

the conditions and scope of the review itself. If the review is limited in scope or depth or is not independent, the FCC will afford it minimal weight.³⁰⁰

It should also be noted that the FCC has recognized that a BOC applying for §271 relief in a particular state may rely on commercial usage of its OSS in other states if its OSS “are essentially the same throughout its region.”³⁰¹ Furthermore, the FCC has stated that a BOC’s region-wide performance data may be relevant to its consideration of a BOC’s application within that region if the BOC demonstrates that it utilizes essentially the same OSS throughout its region.³⁰² A BOC may demonstrate OSS sameness by showing that CLECs either use the identical systems across different states, or that CLECs use separate systems that “reasonably can be expected to behave the same way.”³⁰³ As to manual processes, the FCC has emphasized that evidence demonstrating that those components operate pursuant to a common organizational structure, common methods and procedures and common training may reasonably be relied upon to conclude that the existence of these similarities will result in similar performance.³⁰⁴

(b) The Position of BellSouth

(i) Overview

BellSouth notes that the FCC found in its *Second Louisiana Order* that while BellSouth’s application showed significant progress toward meeting the statutory requirements, BellSouth had not demonstrated that it was providing nondiscriminatory access to the pre-ordering function and ordering interfaces.³⁰⁵ BellSouth maintains that it has now addressed the concerns articulated by the FCC in the *Second Louisiana Order*. BellSouth, in fact, maintains that it has implemented electronic and manual interfaces that give CLECs equivalent access to BellSouth’s OSS functions.³⁰⁶ BellSouth, therefore, asserts that it has satisfied its obligations and provides CLECs with nondiscriminatory OSS access.

(ii) Pre-ordering

²⁹⁹ *Id.* at ¶97.

³⁰⁰ *Id.* at ¶98.

³⁰¹ *SWBT Kansas/Oklahoma Order* at ¶108-109.

³⁰² *Id.* at ¶38.

³⁰³ *Id.* at ¶111.

³⁰⁴ *Id.* at ¶113.

³⁰⁵ *Second Louisiana Order* at 20657-65.

³⁰⁶ BellSouth Post Hearing Brief at p. 58.

The pre-ordering process involves the exchange of information between BellSouth's systems and the CLECs to assist the CLECs in interacting with their end users. Pre-ordering activities enable CLECs to submit complete and accurate service requests to BellSouth. BellSouth maintains that the 688,930 region-wide pre-ordering transactions submitted by CLECs in January of 2001, the 933,308 region-wide pre-ordering transactions submitted by CLECs in February of 2001, and the 1,140,909 region-wide pre-ordering transactions submitted in March 2001 via LENS and TAG respectively demonstrate that CLECs are using BellSouth's pre-ordering interfaces.³⁰⁷

BellSouth represents that it offers CLECs three different interfaces that provide real-time access to the same pre-ordering databases utilized by BellSouth's retail operations: (1) Telecommunications Access Gateway (TAG); (2) Robo TAG™; and (3) Local Exchange Navigation System (LENS). BellSouth asserts that its different interface options support each of the three modes for competitive entry and provide competing carriers with nondiscriminatory access to the same information available to BellSouth's retail representatives.

BellSouth represents that TAG provides CLECs with a standard Application Programming Interface (API) to BellSouth's pre-ordering, ordering and provisioning OSS. CLECs may connect to TAG via LAN to LAN or the Internet. Robo TAG™ provides a standardized, browser-based interface to the TAG gateway that resides on a CLECs local area network (LAN) server and thereby eliminates the need for CLECs to develop and maintain their own TAG interface. BellSouth represents that approximately 65 CLECs utilize TAG. BellSouth further maintains that CLECs have successfully integrated the aforementioned BellSouth interfaces with their own systems.³⁰⁸

BellSouth also offers LENS, a human to machine, web based, Graphical User Interface (GUI) to the TAG gateway, to support CLECs that have made the business decision not to integrate pre-ordering, ordering and provisioning interfaces with their own internal OSS. LENS uses TAG's architecture and gateway and, therefore, has TAG's pre-ordering and ordering functionality for resale and UNEs. BellSouth represents that approximately 330 CLECs utilize BellSouth's LENS interface.³⁰⁹

³⁰⁷ *Id.* at p. 58 [*Citing* Tr. p. 586 (*Pate*)].

³⁰⁸ *Id.* at pp. 58-59 [*Citing* Tr. pp. 527-530 (*Pate*)].

³⁰⁹ *Id.* at p. 59 [*Citing* Tr. p. 520; and *Joint Application by BellSouth Corporation et al. for a Provision of In-Region InterLATA Services in Georgia and Louisiana*, CC Docket No. 01-277, 69 (rel. Oct. 2, 2001) (*BellSouth FCC Br.*)].

BellSouth maintains that it provides CLECs with extensive training and documentation on its interfaces and systems. The documentation BellSouth makes available includes BellSouth's Start Up Guide; BellSouth's Pre-ordering and Ordering Overview Guide; BellSouth's Preorder Business Rules and Appendix; BellSouth's Preorder Business Rules Data Dictionary; and the BellSouth Business Rules for Local Ordering.³¹⁰

In elaborating on the training it provides, BellSouth maintains that it offers extensive training to CLECs covering an array of different subjects in order to assist CLECs in their efforts to work efficiently with BellSouth. Among the courses currently offered by BellSouth to CLECs are CLEC Basic, CLEC Basic Service Ordering, Basic Unbundled Network Element, Trouble Analysis Facilitation Interface (TAFI), LENS, Customer Service Record, Understanding Complex Products, Service Ordering, Collocation, Data Unbundled Network Elements, Directory Listings Forms, Switching Port/Loop Combinations and Tariff. BellSouth notes that it has also developed web-based training for CLECs so that representatives of CLECs can train whenever their schedules allow. Three courses are currently available through web-based training: the CLEC Basic Course, the Resale-LENS Course, and the TAFI Course.

BellSouth asserts that its training offerings have been highly regarded by CLECs. BellSouth in fact maintains that the evaluations which have been submitted anonymously by CLEC representations following their participation in BellSouth classes show that on a rating scale of one to five (with five being the highest), the overall rating BellSouth received from CLECs for 2000 was 4.6.³¹¹

BellSouth also offers a Help Desk to CLECs to assist with technical difficulties experienced with its electronic interfaces such as connectivity and password problems. BellSouth represents that its Help Desk is staffed from 8:00 a.m. until 5:00 p.m. Central Time and that CLECs may contact it using a toll free number. During off-hours BellSouth provides a toll free pager number for assistance.³¹²

(iii) Ordering and Provisioning

Ordering and Provisioning are the processes whereby a CLEC requests facilities or service from BellSouth and then receives information such as a confirmation that the

³¹⁰ *Id.* at pp. 59-60 [*Citing* Tr. pp. 538-539 (*Pate*)].

³¹¹ Tr. pp. 545-551 (*Pate*).

order has been accepted. BellSouth maintains that in addition to TAG, Robo TAG™ and LENS, it provides CLECs with access to the same ordering and processing OSS used by BellSouth through the machine to machine Electronic Data Interchange (“EDI”) interface. BellSouth further represents that it provides CLECs with the means of tracking their service orders through the CLEC Service Order Tracking System (“CSOTS”) which enables CLECs to view, track, and determine the status of service orders on line. BellSouth asserts that approximately 320 CLECs are using CSOTS throughout its territory.³¹³

BellSouth maintains that in the year 2000, CLECs sent 2,886,673 Local Service Requests (LSRs) to BellSouth electronically.³¹⁴ In the first seven months of 2001, BellSouth maintains that CLECs have already sent 3.1 million LSRs to BellSouth electronically. BellSouth thus concludes that it provides nondiscriminatory access to the ordering and provisioning functionalities of its OSS.³¹⁵

With regard to order flow through, BellSouth points out that the FCC has stated that a BOC does not have to provide for electronic ordering of all products and services in order to demonstrate nondiscriminatory access to its OSS. BellSouth further asserts that electronic flow through on all service requests is not practical or possible. BellSouth points out that some categories of orders are designed to be manual in nature including: service requests on accounts for which there is a contractual payoff involved; expedites based upon CLEC requests; types of service requests for which there is a low volume but a high cost to program for flow through; and complex services. BellSouth asserts that because manual entry of these types of orders is the same whether the customer belongs to a CLEC or BellSouth and BellSouth has otherwise provided flow through of CLEC requests in substantially the same time and manner as it provides flow through for BellSouth retail orders, BellSouth’s processing of such orders satisfies the FCC’s requirements.³¹⁶

BellSouth further asserts that its current flow through rates compare very favorably to the flow through rates of both Verizon and SBC in states where they received their §271 approvals. When orders do fall out for manual handling, BellSouth

³¹² *Id.*

³¹³ BellSouth Post Hearing Brief p. 65 [*Citing* Tr. p. 530, 535, 632-633 (*Pate*)].

³¹⁴ Tr. pp. 602-603 (*Pate*).

³¹⁵ BellSouth Post Hearing Brief p. 65 [*Citing* Tr. pp. 602-603].

maintains that it has deployed the centers and resources necessary to handle such orders accurately and in a timely manner as required by the FCC.³¹⁷

BellSouth further asserts that its ordering processes are nondiscriminatory as reflected in the data which demonstrates that once CLEC orders enter BellSouth's mechanized system, they flow through at a high rate. BellSouth contends that for resale residence orders, its flow through performance improved from 87.52% in June to 90.39% in September. For resale business orders, flow through improved from 57.11% in June to 68.47% in September. For UNEs, BellSouth maintains that flow through increased from 70.70% in June to 79.33% in September.³¹⁸

BellSouth contends that its measures and reports to the Commission provide sufficient data on flow through to allow comparisons of BellSouth's flow through to the flow through in both Verizon and SBC states. BellSouth asserts that its flow through rate is comparable to, or higher than, the flow through rate in states using Verizon's flow through measure. For example, as compared to Verizon, BellSouth asserts that fewer of its orders drop out from manual handling and more CLEC orders are processed mechanically. Similarly, BellSouth represents that its flow through rate is comparable to that achieved by SBC using its flow through measure in the states where SBC has received §271 approval.³¹⁹

BellSouth further asserts that actual commercial usage demonstrates that BellSouth is providing Firm Order Confirmations (FOCs) and Rejects in a timely manner, particularly in the partially mechanized and manual categories. For the months of May through September 2001, BellSouth asserts that it met approximately 91.24% of the benchmarks for partially mechanized and manual FOCs and Rejects for resale and UNE orders. BellSouth further maintains that the record demonstrates that when orders do fall out, they are handled in a timely fashion. BellSouth thus concludes that it is providing FOCs and Rejects in a timely manner.

With regard to ordering functionality, BellSouth asserts that it provides CLECs with timely access, including access to Order Rejection Notices, Average Installation Intervals, FOC Notices, Order Completion Notices, and Order Jeopardy Notices.

³¹⁶ *Id.* at p. 66 [*Citing* Tr. pp. 710-711 (*Pate*)].

³¹⁷ *Id.* at p. 66-67.

³¹⁸ *Id.* at p. 67 [*Citing* BellSouth Exhibit 352].

³¹⁹ *Id.* at p. 67-68.

BellSouth maintains that this conclusion is supported by its commercial data and confirmed by the third party test conducted in Georgia.

With regard to Average Installation Intervals, BellSouth maintains that it has demonstrated that it provides CLECs with a means of comparing BellSouth's retail performance with its CLEC aggregate performance. BellSouth contends that based on the actual commercial data submitted in this Docket, BellSouth has demonstrated that its performance with respect to the installation of CLEC orders compares favorably to BellSouth's retail performance. Indeed, from May through September, 2001 BellSouth contends that it met 92.13% of the UNE Order Completion Interval ("OCI") submetrics with volume. From July through September, 2001, BellSouth contends that it met 98.2% of the submetrics with volume.³²⁰

Where Order Completion Notices are concerned, BellSouth maintains that it notifies CLECs that it has completed the installation of the services requested in particular orders through timely and non-discriminatory notices. In particular, for July through September 2001, BellSouth asserts that it met the retail analog for all but one of the loop/port combination submetrics.³²¹

BellSouth further notes that if there is a CLEC error in an order that is submitted, BellSouth will request clarification from the relevant CLEC. BellSouth represents that it now holds such orders in its system for 30 days while awaiting a response from the involved CLEC.

With respect to previous concerns raised by the FCC regarding UNE combinations in the *Second Louisiana Order*, BellSouth asserts that it now provides CLECs with the ability to order the UNE-Platform ("UNE-P") electronically via EDI, TAG, Robo TAG™ or LENS. In addition, BellSouth asserts that it has modified its systems to enable CLECs to order both initial and subsequent partial migrations electronically. BellSouth thus contends that it provides a virtually seamless UNE-P conversion process.³²²

With regard to its OSS capacity, BellSouth represents that it has sufficient OSS capacity to process current and projected order volumes. BellSouth asserts that commercial usage of its OSS demonstrate that its systems have the capacity to process

³²⁰ *Id.* at p. 71.

³²¹ *Id.*

high volumes of orders. In support of this proposition, BellSouth notes that in the first six weeks of WorldCom's entry into the Georgia local exchange market, WorldCom obtained some 40,000 customers, 10,000 of which were of the residential variety. BellSouth maintains that its systems sufficiently processed that high volume of orders.

In the year 2000, BellSouth maintains that CLECs sent 2,886,673 LSRs electronically. BellSouth's systems are currently averaging approximately 406,000 LSRs a month, a 20% increase in the volume of orders from 2000 and almost a 100% increase in orders from 1999. BellSouth thus contends that its systems can, and do, process the LSRs electronically submitted by CLECs.³²³

BellSouth further maintains that the Georgia third party test confirmed that its systems have the capacity to process future order volumes. BellSouth asserts that KPMG specifically evaluated BellSouth's ability to accurately and quickly process preorders and orders using EDI and TAG under normal and peak year-end 2001 projected transactions for UNE-P, resale and other UNE products. BellSouth maintains that KPMG concluded that BellSouth successfully passed the volume tests and validated that BellSouth's systems can meet future CLEC transaction workloads.³²⁴ BellSouth further maintains that since the conclusion of the Georgia third party test, it has increased the capacity of its production environment and performed routine, ongoing, internal, normal, peak, and stress volume tests to ensure that its systems have sufficient capacity to process current and projected volumes. BellSouth thus concludes that these enhancements will ensure that its systems will be able to process projected order volumes.³²⁵

(iv) Maintenance and Repair

BellSouth asserts that the FCC's requirement that BOCs "provide maintenance and repair functionality in substantially the same time and manner that it provides such functionality to itself" does not require BOCs to provide an integratable application to application interface for maintenance and repair.³²⁶ BellSouth maintains that in this proceeding, it has shown that it offers CLECs electronic interfaces for trouble reporting that provides CLECs with access to maintenance and repair functions in substantially

³²² *Id.* at pp. 71-72.

³²³ *Id.* at pp. 72-73 [*Citing* Tr. p. 521 (*Pate*)].

³²⁴ *Id.* at p. 73 [*Citing* Tr. pp. 5850-5851 (*McElroy*)].

³²⁵ *Id.* at p. 73 [*Citing* Tr. p. 5855 (*McElroy*)].

the same time and manner as BellSouth has for such functionality in its retail operations.³²⁷

BellSouth maintains that it provides CLECs access to its electronic interfaces for trouble reporting through the Trouble Analysis Facilitation Interface (“TAFI”) and Electronic Communications Trouble Administration (“ECTA Local”) system. BellSouth maintains that TAFI is the same system that it uses for its retail operations. During May through September 2001, BellSouth asserts that it met the CLEC TAFI Availability Measure for each month and answered CLEC calls to the maintenance center in less time than it took to answer BellSouth retail calls each month.³²⁸ BellSouth thus contends that it satisfies the maintenance and repair aspect of Checklist Item 2 because it provides CLECs with access to maintenance and repair functions in substantially the same time and manner as it does for its own retail customers.

(v) Billing

BellSouth notes that in order to satisfy the billing requirements under Checklist Item 2, BOCs must provide CLECs with two essential billing functions: (i) Complete, accurate and timely reports on the service usage of the competing carriers’ customers, and (ii) complete, accurate, and timely wholesale bills. BellSouth maintains that it has satisfied this two pronged test by providing CLECs usage data in three ways: (1) through the Optional Daily Usage File (ODUF); (2) through the Access Daily Usage File (ADUF); and (3) through the Enhanced Optional Daily Usage File (EODUF). BellSouth maintains that the data provided through the aforementioned files allows CLECs to process call records in their billing systems in substantially the same time and manner that BellSouth processes these types of records for its retail customers.³²⁹

BellSouth further asserts that its performance and commercial usage demonstrate compliance with this checklist item. For example, for May through September 2001, BellSouth maintains that it provided invoices faster to CLECs than to BellSouth retail units for UNEs and resale. Moreover, BellSouth maintains that KPMG initiated thousands of billing transactions as part of the OSS testing process in Georgia

³²⁶ *Id.* at p. 74 [Citing *Bell Atlantic New York Order*, 4069-4070].

³²⁷ *Id.* at p. 74.

³²⁸ *Id.* at p. 74.

³²⁹ *Id.* at pp. 75-76 [Citing Tr. p. 4327 (*Scollard*) and Tr. p. 537 (*Pate*)].

and BellSouth satisfied all such test criteria.³³⁰ BellSouth thus contends that it has satisfied the billing requirements of Checklist Item 2.

(vi) The Change Management Process

BellSouth maintains that its change management process, known as the change control process (CCP), meets the requirements of the competitive checklist. Specifically, BellSouth contends that: (1) It provides information relating to the change management process that is clearly organized and readily accessible to the CLECs; (2) CLECs have substantial input in the design and continued operation of the change management process; (3) the change management plan defines a procedure for the timely resolution of change management disputes; (4) an adequate testing environment is available; and (5) the documentation BellSouth makes available for the purpose of building an electronic gateway is effective and usable.³³¹

(vii) UNE Combinations

BellSouth contends that pursuant to the FCC's *UNE Remand Order*, BOCs have no obligation to combine network elements for CLECs when those elements are not currently combined in the BOC's network. According to BellSouth, the FCC declined to adopt a definition of "currently combined" that would include all elements "ordinarily combined" in the incumbent's network. BellSouth thus contends that it provides access to UNE combinations consistent with the requirements of prevailing law. Specifically, BellSouth contends that it provides, at cost based rates, network elements that are actually combined in its network to the particular location the CLEC wishes to serve.

BellSouth additionally contends that it permits CLECs to combine currently uncombined UNEs through virtual or physical location, or at an assembly point arrangement. If the CLEC wishes to combine UNEs through collocation, BellSouth represents that it will extend the UNEs to the CLECs collocation arrangement so that the CLEC can provide cross connections or other required wiring to effectuate the combination. Alternatively, the CLEC can use an assembly point to combine UNEs and BellSouth will deliver the UNEs requested by the CLEC. BellSouth further maintains

³³⁰ *Id.* at p. 76 [*Citing* Tr. p. 4334 (*Scollard*)].

³³¹ *Id.* at p. 77.

that it has established it will combine currently uncombined UNEs for a CLEC at a negotiated rate.³³²

(viii) UNE Pricing

With regard to UNE pricing, BellSouth contends that the Commission established BellSouth's current cost based rates in Docket 26029 pursuant to the TELRIC methodology. BellSouth correctly notes that the Commission is currently updating the existing cost based UNE rates and establishing new UNE rates in Docket 27821. BellSouth contends that it will true up its rates at the conclusion of that Docket to the extent that rates are changed in that proceeding.³³³

(ix) The Georgia Third Party Test

In addition to the aforementioned testimony which primarily relates to the actual commercial usage of its OSS, BellSouth maintains that the results of the third party testing process in Georgia provides additional evidence of BellSouth's checklist compliance. BellSouth particularly maintains that the Georgia test results demonstrate the operational readiness of its OSS where actual commercial usage is unavailable at significant volumes.³³⁴

BellSouth maintains that in the Georgia third party test, KPMG found that "no deficiencies creating potentially material adverse impacts on competition currently exist in the test categories of pre-ordering, billing, maintenance and repair, capacity management, change management, and flow-through."³³⁵ Specifically, KPMG determined that BellSouth satisfied 96% of the 1,173 criteria evaluated. For the remaining criteria, 2% of the tests had not yet been completed and BellSouth failed to satisfy 2%.³³⁶ For the few "not satisfied" issues, BellSouth notes that KPMG pointed out that the Georgia Public Service Commission would "be able to monitor these issues on an ongoing basis through the performance measures and/or penalty plans in place to address [them]."³³⁷ BellSouth contends that this Commission can do the same since it

³³² *Id.* at pp. 82-83 [*Citing* Tr. p. 1364, 1373-1375 (*Milner*) and Tr. p. 202 (*Ruscilli*)].

³³³ *Id.* at p. 85 [*Citing* Tr. p. 180, 200 (*Ruscilli*)].

³³⁴ *Id.* at p. 31 [*Citing* Tr. p. 5821-5822 (*McElroy*)].

³³⁵ *Id.* [*Citing* BellSouth Exhibit 307].

³³⁶ *Id.* [*Citing* Tr. p. 5821 (*McElroy*); and Tr. p. 5023 (*Varner*)].

³³⁷ *Id.*

has the same performance measures and types of data as other state Commissions in BellSouth's region.³³⁸

BellSouth maintains that it has successfully demonstrated that the Georgia third party test is comparable to those conducted in New York and Texas and approved by the FCC.³³⁹ To that end, BellSouth represents that the Georgia test plan was mandated by the Georgia Public Service Commission and was drafted based on the parameters established by the Georgia Public Service Commission. BellSouth contends that the fact that the Georgia test did not examine every possible aspect of BellSouth's systems is merely reflective of the Georgia Public Service Commission's view that commercial usage is the most probative evidence of compliance. BellSouth urges this Commission to similarly conclude that it was appropriate the Georgia third party test to only address those areas in which there was not significant commercial usage at the time the test was commenced.³⁴⁰

BellSouth maintains that the Georgia third party test meets the FCC's requirements and was conducted in an independent manner. BellSouth asserts that the fact that it paid KPMG to conduct the test is not unique and did not affect KPMG's independent judgement. BellSouth contends that "KPMG's compensation...was based solely on the time spent on the project and there is no suggestion, let alone any evidence, that KPMG's conclusions were in any way influenced by the fact that BellSouth paid KPMG's bills for the third party testing."³⁴¹ Moreover, BellSouth contends that CLECs such as AT&T did not object to having KPMG conduct the Georgia third party test and advocated that BellSouth pay for the test.³⁴²

BellSouth in fact contends that the CLECs had a great deal of involvement in the Georgia third party test and were given an opportunity to comment on the test plan before it was approved. Further, BellSouth maintains that CLECs were invited by KPMG to participate in weekly calls and face-to-face meetings to discuss the status of the test, including exceptions. In some cases CLECs even submitted orders on behalf of KPMG.³⁴³

³³⁸ *Id.* at p. 32 [*Citing* Tr. p. 5821 (*McElroy*)].

³³⁹ *Id.* [*Citing* Tr. p. 5818-5819 (*McElroy*); and Tr. pp. 6156-6157 (*Norris*)].

³⁴⁰ *Id.* [*Citing* Tr. pp. 5826-5830 (*McElroy*)].

³⁴¹ *Id.* [*Citing* Tr. p. 5832 (*McElroy*)].

³⁴² *Id.* [*Citing* Tr. p. 5832 (*McElroy*) and Tr. pp. 6122-6124 (*Norris*)].

³⁴³ *Id.* at pp. 32-33 [*Citing* Tr. pp. 5828-5830 (*McElroy*)].

BellSouth contends that the methodologies utilized by KPMG in the Georgia third party test are the same methodologies utilized by KPMG in Massachusetts and New York, where 271 relief has been granted by the FCC. BellSouth contends that KPMG's use of its professional judgement was the same in those states as it was in Georgia. BellSouth notes that the Georgia Commission confirmed that "the exercise of professional judgement by KCI [KPMG] in conducting the Georgia test is consistent with the process utilized in all third party tests conducted by KCI [KPMG] in other states."³⁴⁴ BellSouth asserts that the fact that the Georgia third party test closed with nine unsatisfied metrics test criteria does not lead to the conclusion that the Georgia third party test failed to meet the criteria of a military-style test as required by the FCC.

BellSouth maintains that the Georgia third party volume testing adds further support to BellSouth's contention that its systems are capable of handling increased CLEC order volumes. BellSouth concedes that the volume test was conducted in the RSIMMS test environment as opposed to the ENCORE production environment, but points out that KPMG made changes to the RSIMMS test environment so that it could support the business volumes tested. In addition, BellSouth maintains that the software applications in the two environments were the same.³⁴⁵ BellSouth moreover asserts that in its final report, KPMG concluded that the same changes made in the RSIMMS test environment to support the volume of tests could be made in the production environment and that BellSouth has made such enhancements to its production environment.³⁴⁶

(c) The Position of AT&T and Covad³⁴⁷

(i) Nondiscriminatory Access to OSS

AT&T and Covad assert that BellSouth has, despite its claims to the contrary, not made the improvements in its OSS required by the FCC's *Second Louisiana Order*.³⁴⁸ In reviewing BellSouth's initial §271 application for Georgia and Louisiana, AT&T points out that the Department of Justice (DOJ) declined to recommend approval of BellSouth's application because of OSS deficiencies. The Justice Department stated

³⁴⁴ *Id.* at p. 33 [Citing the *Comments of the Georgia Public Service Commission* filed with the FCC on November 5, 2001, in CC Docket No. 01-277,117-18 (the "Georgia Comments")].

³⁴⁵ *Id.* at p. 33 [Citing Tr. p. 755 (*Pate*)].

³⁴⁶ *Id.* at p. 33-34 [Citing Tr. p. 757 (*Pate*)].

³⁴⁷ Covad also raised points through the testimony of Ms. Collette Davis which were not addressed in the Post Hearing Brief jointly submitted by AT&T and Covad. Covad's additional points are addressed in §§ of this section.

³⁴⁸ AT&T/Covad Post Hearing Brief at p. 42, [Citing *Second Louisiana Order* at ¶83].

that “[a]n array of CLECs have lodged credible complaints about the sufficiency of BellSouth’s [OSS] and neither the reported performance data nor the results of the third party OSS testing relied on in this application are sufficient to determine that these complaints are unfounded.”³⁴⁹

AT&T notes that among the several problem areas identified by the Department of Justice in its evaluation of BellSouth’s OSS in the Georgia and Louisiana application were problems related to BellSouth’s manual processing of orders and provisioning notices.³⁵⁰

(ii) BellSouth’s Reliance on Manual Processing

AT&T maintains that BellSouth’s excessive reliance on manual processing to handle CLEC orders is discriminatory and adversely affects competition. AT&T asserts that BellSouth’s retail operations have the capability to submit electronic orders for all products, services and transactions and BellSouth’s OSS process such electronic orders automatically without any manual processing.³⁵¹ In contrast, between 10 and 68% of CLEC orders fall out from manual processing depending on the interface or product type. AT&T and Covad assert that BellSouth is the reason for such fallout. In fact, during March 2001, AT&T and Covad maintain that 21% of CLEC orders that fell out from manual processing did so because of BellSouth system design or system errors.³⁵²

AT&T asserts that BellSouth’s excessive use of manual processing to handle CLEC orders is discriminatory and adversely impacts consumers and competition in several respects. For example, manual processing delays timely order status notices for CLEC local service requests that fall out for manual processing. According to AT&T, It takes BellSouth approximately 12 hours, on average, to provide a Rejection Notice and approximately 18 hours to provide a FOC for electronic LSRs that fall out for manual processing. In contrast, it takes less than 15 minutes, on average, to send a Rejection Notice or FOC when the LSR flows through and is processed electronically.³⁵³

AT&T also points out that electronic LSRs that fall out for manual processing are subject to later due dates. Later due dates result because manual processing severely

³⁴⁹ *Id.* [Citing DOJ Georgia/Louisiana I Evaluation at 2].

³⁵⁰ *Id.* at p. 43 [Citing DOJ Georgia/Louisiana I Evaluation at 14-23].

³⁵¹ *Id.* at p. 44 [Citing Tr. pp. 2918-2919 (Bradbury); and Tr. pp. 854-855 (Pate)].

³⁵² *Id.* at Tr. pp. 2918, 2925, 2927 (Bradbury).

delays the issuance of a FOC and due dates are assigned on a first-come, first-served basis at the time the system generates a FOC.³⁵⁴

AT&T further asserts that electronic LSRs that fall out for manual processing face the risk of input errors. AT&T points out that input errors can lead to a different service being “ordered” than that which the CLEC actually requested.³⁵⁵

AT&T further maintains that the manual processing of LSRs is more costly than processing LSRs that electronically flow through. AT&T asserts that the objective in a competitive environment is to move toward lower costs which lead to lower prices for consumers.³⁵⁶

AT&T asserts that the FCC has recognized that “excessive reliance on manual processing, especially for routine transactions, impedes the BOC’s ability to provide equivalent access.”³⁵⁷ In considering BellSouth’s initial application for Georgia and Louisiana, the Department of Justice shared similar concerns regarding the timeliness and accuracy of manually processed orders.³⁵⁸

AT&T additionally asserts that CLECs evaluate the extent to which BellSouth relies on manual processing as one criterion for determining BellSouth’s readiness to handle full commercial volumes of orders. AT&T contends that the reality is that CLECs are less likely to launch a mass marketing campaign in which they would likely submit thousands of LSRs a week if BellSouth continues to rely so heavily on manual processing. According to AT&T, further delays, a greater number of errors, and higher costs will only be amplified if BellSouth continues to rely extensively on manual processing for CLEC orders.³⁵⁹

AT&T asserts that based on the foregoing, it is apparent that BellSouth’s retail operations have electronic ordering and flow through capability that is far superior to that provided to CLECs. AT&T contends that this lack of parity gives BellSouth a distinct advantage because it results in delays for CLEC orders, increases the probability of error, and increases CLEC’s costs of operations while ultimately lowering

³⁵³ *Id.* [Citing Tr. p. 2922-2923 (*Bradbury*)].

³⁵⁴ *Id.*

³⁵⁵ *Id.*

³⁵⁶ AT&T/Covad Post Hearing Brief p. 45 [Citing Tr. p. 867 (*Pate*)].

³⁵⁷ *Id.* [Citing *Second Louisiana Order* ¶110].

³⁵⁸ *Id.* [Citing *DOJ Georgia/Louisiana I Evaluation*, at 17-23].

³⁵⁹ *Id.* [Citing Tr. p. 3402 (*Lichtenberg*)].

the quality of service CLECs can provide to their customers. AT&T accordingly concludes that BellSouth fails to provide nondiscriminatory access to its OSS.³⁶⁰

(iii) The Parsing of CSRs

AT&T further contends that successful parsing of Customer Service Records (“CSRs”) is a necessary component of successful OSS integration.³⁶¹ AT&T contends that one of the most efficient and effective ways to generate a service request for telephone service is for a sales representative to be able to take information from the customer service record and electronically populate that into the service request. AT&T contends that BellSouth’s front end retail systems have the capability to transmit and receive parsed customer service record (CSR) data internally with little or no manual input to facilitate retail operations. Consequently, BellSouth’s retail operations can electronically populate fields in its retail orders with CSR data. AT&T Accordingly maintains that parsing saves BellSouth time and expense and provides a greater level of accuracy.³⁶²

AT&T maintains, however, that BellSouth does not provide CLECs with parsed CSR data and prevents CLECs from parsing CSR data with any reliability by withholding necessary data and information. AT&T further contends that the size and format of certain fields in the CLEC ordering interfaces that BellSouth has designed are not compatible with the size and format of the data obtained from customer service records. Consequently CLECs cannot electronically populate the LSR.³⁶³

AT&T notes that in its *Second Louisiana Order*, the FCC found that BellSouth failed to satisfy Checklist Item 2 in part because BellSouth did not provide CLECs nondiscriminatory access to parsed CSR information.³⁶⁴ AT&T notes that parsing rules for CSRs have been included in industry standards since July 1998 and CLECs have been requesting parsed CSRs since September 1998.

AT&T further states that CLECs have advised BellSouth that parsed CSRs are a top priority opinion request in the change control process. Despite the FCC’s finding and the industry’s position, however, AT&T contends that BellSouth continues to deny CLECs equivalent parsing functionality and delayed the implementation of this

³⁶⁰ *Id.*

³⁶¹ *Id.* p. 46 [Citing *SWBT Texas Order* at ¶153].

³⁶² *Id.* p. 46 [Citing Tr. pp. 2909-2912 (*Bradbury*)].

³⁶³ *Id.*

functionality from its original target date of April 2000 to its current target date of January 2002.³⁶⁵

(iv) Due Date Calculation

AT&T further asserts that BellSouth does not provide adequate due date calculation functionality. AT&T notes that in its *Second Louisiana Order*, the FCC voiced its concerns about the inequality of due dates between BellSouth retail and CLEC orders. Specifically, the FCC was concerned about the lack of a parity due date calculation in the pre-ordering interface and delays caused by BellSouth's extensive reliance on manual processing. The FCC indicated that it would be examining, in future applications, the impact of the automatic due date calculation capability that BellSouth was previously ordered to implement by the Georgia Public Service Commission.³⁶⁶

AT&T further contends that in some instances, BellSouth's due date calculator provides the wrong date. For certain other products and/or services, AT&T asserts that BellSouth's systems do not calculate due dates at all. When BellSouth's pre-ordering interface fails to provide a calculated due date, CLECs must default to using the "targeted" interval in BellSouth's interval guide. If this date falls on a date when BellSouth's workload precludes providing the service, a longer due date will be returned to the CLEC on the FOC. As a result, the CLEC must notify the customer of the delay. AT&T asserts that these scenarios undermine the credibility of CLECs in the eyes of their customers.³⁶⁷

(v) Access to Maintenance and Repair

AT&T further maintains that BellSouth does not provide equivalent access to maintenance and repair functions through the two options for electronic trouble reporting it offers. For many services associated with a telephone number, BellSouth offers access to its proprietary Trouble Analysis Facilitation Interface ("TAFI"). For both telephone number associated exchange services and individually designed services, BellSouth provides electronic trouble reporting through the Electronic Communications Trouble Administration ("ECTA") gateway.³⁶⁸

³⁶⁴ *Id.* [Citing *Second Louisiana Order* at ¶94].

³⁶⁵ *Id.* at pp. 46-47 [Citing Tr. p. 799 (Pate); and Tr. pp. 2911-2912 (*Bradbury*)].

³⁶⁶ *Id.* p. 47 [Citing *Second Louisiana Order* at ¶106].

³⁶⁷ *Id.* pp. 47-48 [Citing Tr. pp. 2913; and 3017-3018 (*Bradbury*)].

³⁶⁸ *Id.* p. 48 [Citing Tr. p. 2949 (*Bradbury*)].

AT&T notes that in rejecting BellSouth's §271 application for Louisiana, the FCC concluded that neither TAFI nor ECTA provided competitors with access to maintenance and repair functions that was equivalent to BellSouth's own capabilities. Specifically, the FCC found that TAFI does not provide nondiscriminatory access because BellSouth could integrate TAFI with its back off systems but CLECs could not. The FCC concluded that ECTA, as provided by BellSouth, did not provide nondiscriminatory access to maintenance and repair functions because, as BellSouth acknowledged, TAFI has superior functionality.³⁶⁹

AT&T asserts that BellSouth has not addressed the FCC's concerns by providing TAFI functionality via the ECTA interface which was the solution that AT&T first requested in 1996. AT&T further maintains that BellSouth has also failed to improve the functionality of ECTA and thus imposes upon CLECs the same Hobson's choice with respect to maintenance and repair that the FCC found discriminatory.³⁷⁰

(iii) BellSouth's Order Completion Interval and Total Service Order Cycle Time

AT&T further maintains that BellSouth's Order Completion Interval ("OCI") and Total Service Order Cycle Time ("TSOCT") performance fails to satisfy the requirements of the Act. In particular, AT&T asserts that BellSouth's self reported data indicates that its performance in completing CLEC orders has been consistently worse than the service it provides itself. In fact, AT&T asserts that BellSouth's TSOCT data shows that BellSouth takes approximately twice as long, on average, to complete CLEC orders as it takes to complete its own retail orders.³⁷¹

Rather than addressing the OSS at the root of the aforementioned problems, AT&T asserts that BellSouth, through its witness Dr. Bamburger, attempted to recalculate the data to show that the service BellSouth provides CLECs is at parity with the service it provides itself. Dr. Bamburger claims that "most or all" of BellSouth's delayed completion of CLEC orders occurs because the end users missed appointments or the CLECs requested later due dates on orders, but did not properly "L-CODE" those orders. AT&T notes that it is unable to confirm this conclusion because

³⁶⁹ *Id.* pp. 48-49 [Citing *Second Louisiana Order* at ¶148-157].

³⁷⁰ *Id.* [Citing Tr. p. 2949-2955 (*Bradbury*)].

³⁷¹ *Id.* [Citing Tr. pp. 2945-2946 (*Bradbury*)].

the information necessary to verify the calculations described is not available in any of the data BellSouth reports.³⁷²

AT&T contends that the fundamental problem with the methodology employed by Dr. Bamburger lies in the identification of which performance failures for orders should be blamed on the end user and which orders should have been L-CODED because the CLEC requested a later due date. Both of these determinations involve reference to a single piece of information which Dr. Bamburger calls the “customer-requested due date.”³⁷³ The term is introduced as follows: “Each order from a CLEC includes a customer-requested due date which indicates when the customer wants the order filled.”³⁷⁴ This implies that the source of the date is the CLEC LSR and that the subsequent calculations and manipulation of data stem from the CLEC’s request. Dr. Bamburger acknowledges, however, that the source of the “customer-requested due date” used in his calculations was actually a BellSouth database which provided the date BellSouth sets on the FOC it returns to the CLEC.³⁷⁵

AT&T asserts that the due date BellSouth returns on the FOC is not likely to be the same as the due date the CLEC requests on the LSR. AT&T notes that Dr. Bamburger admitted that he did not review the actual orders or LSRs submitted by CLECs and did not interview any customers as part of his analysis. Thus, the “customer requested due dates” Dr. Bamburger used in his analysis were generated by BellSouth, not the CLECs or customers. Accordingly, AT&T maintains that Dr. Bamburger’s conclusion that BellSouth’s performance failures should be blamed on factors beyond BellSouth’s control is completely unsupported.³⁷⁶

AT&T asserts that the testimony of BellSouth’s witness Ronald N. Pate demonstrates the fallacy of Dr. Bamburger’s conclusions. More specifically, AT&T points out that according to Mr. Pate, any orders that should have been L-CODED by CLECs would have been L-CODED automatically by BellSouth.³⁷⁷ Mr. Pate indicates that in February 2001, BellSouth began to add the L-CODE to all electronic orders for which a CLEC requested an extended interval, but did not have the appropriate code on

³⁷² *Id.* at pp. 49-50 [*Citing* Tr. p. 1929 (Bamburger)].

³⁷³ *Id.* [*Citing* Tr. p. 1930 (Bamburger)].

³⁷⁴ *Id.* [*Citing* Tr. p. 1938 (Bamburger)].

³⁷⁵ *Id.* [*Citing* Tr. pp. 1959-1961 (Bamburger)].

³⁷⁶ *Id.* at p. 51 [*Citing* Tr. pp. 1959-1960 (Bamburger)].

³⁷⁷ *Id.* [*Citing* Tr. pp. 4044-4045 (Pate)].

the LSR. Dr. Bamburger analyzed CLEC orders placed in April 2001, which was after BellSouth's automatic application of L-CODEs to orders with extended intervals. AT&T accordingly asserts that there should have been no improperly coded orders to be analyzed.³⁷⁸ AT&T thus concludes that Dr. Bamburger's conclusion is unfounded and that BellSouth's convoluted effort to blame CLECs and customers for its own deficiencies should be rejected. Simply put, AT&T asserts that BellSouth is not providing parity performance and its efforts to disguise this discrimination should be disregarded.³⁷⁹

(vii) Change Management

AT&T further alleges that BellSouth's change management process is inadequate and that BellSouth consistently fails to adhere to its change management procedures. AT&T contends that BellSouth's failure in this regard is exacerbated by the FCC's conclusion to give "substantial consideration to the existence of an adequate change management process and evidence that the BOC has adhered to this process over time."³⁸⁰

AT&T contends that CLECs have identified numerous concerns with BellSouth's change management process that were recognized by the U.S. Department of Justice in its evaluation of BellSouth's initial Georgia/Louisiana application. The DOJ indicated that BellSouth's change management process "appears unresponsive to [CLEC] concerns" that BellSouth's testing environment is inadequate.³⁸¹

AT&T maintains that change management process utilized by BellSouth is not adequate for several reasons. First, AT&T alleges that BellSouth disregards CLEC input because it retains and exercises a unilateral veto power.³⁸² Second, BellSouth delays or fails to implement CLEC initiated requests. AT&T lastly alleges that BellSouth fails to provide a suitable testing environment.

With regard to BellSouth's alleged retention of a unilateral veto power, AT&T contends that nothing in BellSouth's change control process, or CCP, requires BellSouth to comply with changes or improvements requested by CLECs even if such requests are reasonable, unanimous and necessary to avoid discrimination. AT&T

³⁷⁸ *Id.* [Citing Tr. pp. 1928 (*Pate*) and 1936 (*Bamburger*)].

³⁷⁹ *Id.* at p. 51.

³⁸⁰ *Id.* at p. 52 [Citing *SWBT Kansas/Oklahoma Order* at &166].

³⁸¹ *Id.* [Citing *DOJ of Georgia/Louisiana I Evaluation* at 22].

contends, however, that BellSouth retains complete unilateral veto power and exercises that veto power. AT&T represents that its witness Mr. Bradbury demonstrated that of seven contested items, items where the voting went against BellSouth, BellSouth overrode the vote in each case to implement its own language. By retaining and exercising such veto power, AT&T contends that BellSouth has essentially rendered CLEC voting in the CCP meaningless.³⁸³

AT&T also maintains that BellSouth further disregards CLEC input by delaying or failing to implement CLEC initiated requests. AT&T asserts that the most poignant example of such a delay relates to the parsing of customer service records. According to AT&T, BellSouth admits that it has not provided CLECs with access to parsing functionality at parity with the parsing functionality it provides itself, even though CLECs have been seeking equivalent parsing since 1998. BellSouth emphasizes that the target date for providing CLECs with equivalent parsing functionality is January 2002, some four years after it was requested.³⁸⁴

AT&T also alleges that BellSouth fails to provide an adequate testing environment. AT&T contends that it is critical that CLECs have access to a stable testing environment and be given the opportunity to test new releases before implementation. Otherwise, CLECs risk major disruptions of service each time the ILEC makes a change to its side of the interface.

AT&T alleges that BellSouth's CCP fails to provide a separate testing environment sufficient to give CLECs an adequate opportunity to test new releases.³⁸⁵ As an example, AT&T notes that the current testing environment provided by BellSouth for EDI is not segregated from the production environment. Thus, testing of a new release would endanger normal CLEC transactions. More specifically, a catastrophic failure during test transactions could interrupt normal production processing.³⁸⁶

Based on the foregoing, AT&T questions BellSouth's representations that its new testing environment, the CLEC Application Verification Environment (CAVE), will provide a separate test environment for pre-release testing.³⁸⁷ More particularly, AT&T

³⁸² *Id.* [Citing Tr. p. 2889 (Bradbury)].

³⁸³ *Id.* at p. 53 [Citing Tr. pp. 2956-2958 and 3068 (Bradbury)].

³⁸⁴ *Id.* at p. 53 [Citing Tr. p. 792 (Pate); and Tr. p. 2911-2912 (Bradbury)].

³⁸⁵ *Id.* at p. 54 [Citing *Bell Atlantic New York Order* ¶109 and Tr. pp. 2968-2969 (Bradbury)].

³⁸⁶ *Id.* [Citing Tr. p. 2968-2969 (Bradbury)].

³⁸⁷ *Id.* at p. 55 [Citing Tr. p. 4174-4181 (Pate)].

contends that CAVE will not be used for new carrier testing and may not be utilized for testing “minor” releases.³⁸⁸ Although said to be generally available on April 23, 2001, AT&T points out that CAVE has never been used to test any BellSouth software release.³⁸⁹ According to AT&T, only one user has even beta tested the TAG portion of CAVE.³⁹⁰

AT&T furthermore contends that BellSouth deliberately excluded two interfaces, LENS and ROBO TAG™ from the CAVE testing environment.³⁹¹ AT&T asserts that the exclusion of LENS from the CAVE testing environment is particularly egregious given that LENS processes almost two thirds of all CLEC requests for service.³⁹²

AT&T notes that the FCC has recognized that “prior to issuing a new software release for upgrade, the BOC must provide a testing environment that mirrors a production environment in order for competing carriers to test the ‘new release.’³⁹³ Despite the position of the FCC, AT&T maintains that it learned during the process of attempting to perform an EDI beta test with CAVE, that CAVE was designed by BellSouth using a communications strategy that did not match that which it used in the production environment.³⁹⁴ AT&T thus asserts that BellSouth’s new testing environment is inadequate because it does not mirror the production environment.

AT&T concludes that BellSouth has failed to provide an adequate change management process without which it cannot demonstrate that it provides competitors with a meaningful opportunity to compete. Therefore, AT&T asserts that BellSouth has failed to show that it provides nondiscriminatory access to network elements as required by Checklist Item 2.³⁹⁵

(vii) Access to UNE Combinations

AT&T further contends that BellSouth fails to provide nondiscriminatory access to UNE combinations. AT&T points out that the FCC and the Department of Justice have noted that “it is critical that [CLECs] have the ability to enter the local exchange market through the use of combinations of UNEs.”³⁹⁶ AT&T contends that it and other CLECs

³⁸⁸ *Id.* [Citing Tr. p. 577-578 (*Pate*); and Tr. p. 2969 (*Bradbury*)].

³⁸⁹ *Id.* [Citing Tr. p. 2969 (*Bradbury*)].

³⁹⁰ *Id.* [Citing Tr. p. 2969 (*Bradbury*)].

³⁹¹ *Id.* [Citing Tr. p. 587 (*Pate*)].

³⁹² *Id.* [Citing Tr. p. 2970 (*Bradbury*)].

³⁹³ *Id.* [Citing *Bell Atlantic New York Order* ¶109].

³⁹⁴ *Id.* at p. 56 [Citing Tr. p. 3078-3080 (*Bradbury*)].

³⁹⁵ *Id.*

³⁹⁶ *Id.* [Citing *Second Louisiana Order* at ¶141].

have experienced serious difficulties successfully migrating customers from BellSouth's service to UNE-P service, including an unacceptable number of loss of service incidents.³⁹⁷

AT&T contends that much of the problem with loss of service incidents surrounding UNE-P conversions is attributable to BellSouth's failure to utilize a "single C-Order" for UNE-P migration. AT&T alleges that when a customer converts from BellSouth service to UNE-P, the conversion should have no impact on the end user's service at all. AT&T contends, however, that CLEC testimony demonstrates that BellSouth's migration process is not working properly and has resulted in an unduly high number of incidents of loss of service. AT&T contends that matters are made worse by the fact that BellSouth's role in causing the loss of service is hidden from the consumer and leaves the CLEC to incur the customer's wrath and its own damaged business reputation.³⁹⁸

According to AT&T, problems arise in UNE-P because BellSouth uses two separate internal orders to convert customers to UNE-P: a new, or "N" order, accomplishes this conversion to UNE-P; a disconnect, or "D", order disconnects the customer's service from BellSouth. AT&T notes that BellSouth witness Ronald Pate admits that if BellSouth does not process these two orders in the proper sequence, the customer's service is disconnected before the conversion to the new service is complete.³⁹⁹

Currently, BellSouth puts an RRSO code on the "N" order and the "D" order in order to link both orders in downstream processing.⁴⁰⁰ Although intended to prevent inadvertent loss of dial tone, the continuing problems CLECs have experienced reveal that the RRSO coding is not serving its function.⁴⁰¹ AT&T asserts that these problems are avoidable because two orders are not necessary. AT&T points out that BellSouth does not use the two order "N" and "D" process when converting to resale, but BellSouth has instead for years utilized a single "C" order format. According to AT&T, this approach solves the problem of inadvertent loss of service related to migration for

³⁹⁷ *Id.* [Citing AT&T Exhibit 94].

³⁹⁸ *Id.* at p. 57 [Citing AT&T Exhibit 94; and Tr. p. 3390 (*Lichtenberg*)].

³⁹⁹ *Id.* at p. 57 [Citing Tr. p. 933-934 (*Pate*)].

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.* [Citing AT&T Exhibit 94; and Tr. p. 3395-3397 (*Lichtenberg*)].

resale. For UNE-P migrations, however, BellSouth simply has failed to develop a single order process.⁴⁰²

AT&T asserts that BellSouth's process failures for UNE-P migration have put CLECs at a significant competitive disadvantage. AT&T maintains that this problem was brought to BellSouth's attention in March and May 2001 at the UNE-P Users Group meeting for Georgia. Although originally anticipated for year end 2001, the target implementation date for single "C" order processing for UNE-P conversion has been pushed back to sometime during the first quarter of 2002. According to AT&T, BellSouth cannot demonstrate that it provides nondiscriminatory access to network elements while CLECs continue to experience unduly high incidents or loss of service when migrating customers through UNE-P. AT&T contends that until BellSouth implements single "C" order processing for UNE-P conversion and proves that its process eliminates losses of service surrounding migration, BellSouth fails to meet its burden for Checklist Item 2.⁴⁰³

AT&T further alleges that BellSouth will not provide UNE combinations to CLECs for a specific customer at UNE cost-based TELRIC prices unless the specific elements which make up the combination for that customer are physically combined at the time of the request and are being used by BellSouth to provide service to that specific customer. As a result of these limitations, AT&T asserts that BellSouth does not provide cost based access to combinations that would allow CLECs to serve new customers or provide existing customers additional lines.⁴⁰⁴

AT&T further notes that if BellSouth does decide to provide CLECs a combination that does not fall within the limited circumstances described above, it assesses a "glue charge."⁴⁰⁵ These charges "are additional non-TELRIC, non-cost based charges" that BellSouth adds to Commission approved network element rates for loop/switch port and loop/transport combinations.⁴⁰⁶ AT&T asserts that these additional charges have no cost basis and are set at whatever level BellSouth chooses. AT&T

⁴⁰² *Id.* at pp. 57-58 [*Citing* Tr. p. 958-960 (*Pate*)].

⁴⁰³ *Id.* at p. 58 [*Citing* AT&T Exhibit 94; and Tr. p. 4107 (*Pate*)].

⁴⁰⁴ *Id.* at pp. 58-59 [*Citing* Tr. p. 2857 (*Guepe*)].

⁴⁰⁵ *Id.* [*Citing* Tr. p. 276-278 (*Ruscilli*)].

⁴⁰⁶ *Id.* [*Citing* Tr. p. 2856-2857 (*Guepe*)].

contends that by making UNE combinations unduly expensive, BellSouth disadvantages its competitors and inhibits competition in violation of the Act.⁴⁰⁷

According to AT&T, the FCC has recognized that it is critical for CLECs to have the ability to enter the local exchange market through the use of UNE combinations.⁴⁰⁸ Furthermore, in order to provide nondiscriminatory access to its network elements, BellSouth must provide CLECs with access equal to that which it provides itself. AT&T contends that by adding “glue charges,” BellSouth discriminates against CLECs because it denies CLECs equal access to network elements. AT&T represents that the growth of mass market competition depends in part, on CLECs being able to provide service in a cost effective manner. AT&T asserts that “glue charges” impair competition by ensuring that in many instances, it will always be less costly for the customer to use BellSouth rather than a CLEC. AT&T argues that so long as BellSouth continues to force CLECs to incur extra charges for equal access, BellSouth cannot meet its burden under Checklist Item 2.⁴⁰⁹

(viii) BellSouth’s Reliance on the Georgia Third Party Test

AT&T further urges the Commission to thwart BellSouth’s attempt to fill the gaps in its premature application by accepting the results of the Georgia third party test as persuasive evidence that BellSouth provides nondiscriminatory access to its OSS in Alabama. AT&T concludes that BellSouth’s attempt to have the Commission hold that its OSS are regional, accept the Georgia third party test, and at the same time completely ignore the more comprehensive third party test ongoing in Florida should be denied. According to AT&T, BellSouth’s own witness, Mr. McElroy, testified that Michael Weeks, the person at KPMG primarily responsible for overseeing the Georgia third party test, told the North Carolina Utilities Commission that the results of the Georgia test were never intended to be used other than by the Georgia Public Service Commission.⁴¹⁰ As Mr. Weeks explained:

[I]t gives us a little bit of cause for pause that its being used in another jurisdiction in a way that we didn’t intend for it to be used and in a way that we explicitly tried to keep from happening.⁴¹¹

⁴⁰⁷ *Id.*

⁴⁰⁸ *Id.* at p. 60 [*Citing Second Louisiana Order* at ¶101].

⁴⁰⁹ *Id.* [*Citing Tr. p. 2850-2851 (Guepe)*].

⁴¹⁰ *Id.* at p. 19 [*Citing BellSouth Exhibit 355 at 10, 137; and BellSouth Exhibit 307, Final Report at II-1*].

⁴¹¹ *Id.* [*Citing BellSouth Exhibit 355 at 137-138*].

AT&T stresses that the FCC has explained that when evaluating the operational readiness of an ILEC's OSS, the most probative evidence is actual commercial usage in the state in question. "Absent sufficient and reliable data on commercial usage in that state, [the FCC] will consider the results of carrier to carrier testing, independent third party testing, and internal testing..."⁴¹² "The persuasiveness of a third party test is dependent on the conditions and scope of the review" and "third party reviews should encompass the entire obligation of the [ILEC] to provide nondiscriminatory access, and where applicable, should consider the ability of actual competing carriers in the market to conduct business utilizing in the incumbent LEC's OSS access."⁴¹³ Third party tests that are not comprehensive, not independent, and not blind are not persuasive evidence in assessing the real world impact of an incumbents OSS own competing carriers.⁴¹⁴ AT&T points out that the DOJ, in reviewing the Georgia third party test, recognized that the Georgia test has significant limitations.⁴¹⁵

First, the Georgia test was limited in scope. Although the Commission ultimately required some additional testing and other improvements, the number of key errors remained outside the parameters of the test. Second, unlike in New York, in Georgia, KPMG did not draft the Master Test Plan. Third, a number of Georgia tests "exceptions" appear to have been closed without adequate verification that the problems had been resolved. Finally, KPMG has not completed the metrics testing ordered by the Georgia PSC.⁴¹⁶ (Footnotes omitted).

AT&T accordingly asserts that if the Commission intends to rely on a third party test, it should conduct its own test or should consider the final results from the more comprehensive, ongoing third party test in Florida. AT&T asserts that the numerous, open observations and exceptions in Florida reveal continuing deficiencies in BellSouth's OSS.⁴¹⁷

(ix) BellSouth's OSS are not Regional in Nature

AT&T and Covad assert that the Commission should not rely on the results of the Georgia third party test because BellSouth's OSS are not sufficiently the same from state to state and thus are not as "regional" as BellSouth would have the Commission believe. AT&T and Covad argue that BellSouth's OSS in fact differ from state to state. AT&T and Covad contend that BellSouth's reliance upon an attestation from

⁴¹² AT&T Post Hearing Brief at p. 19 [*Citing SWBT Kansas/Oklahoma Order* at ¶105].

⁴¹³ *Id.* at p. 20 [*Citing Ameritech Michigan Order* at ¶216].

⁴¹⁴ *Id.* at p. 20 [*Citing Bell Atlantic New York Order* at ¶100].

⁴¹⁵ *Id.* [*Citing DOJ Evaluation of Georgia/Louisiana I* at 5].

⁴¹⁶ *Id.*

PriceWaterhouse Coopers (PWC) as an affirmation of its regionality arguments is both limited and fundamentally flawed.⁴¹⁸

AT&T and Covad note that each state in BellSouth's region is different in that consumers in each state have different needs and priorities and the competitive environment is different from state to state as well. Each state Commission has the responsibility of assuring that BellSouth meets the requirements of the Act and the unique context of that particular state. If one state were to defer to the findings of another state, there would be no need for recommendations from state Commissions. AT&T and Covad do not argue that evidence from other states is never relevant, but contend that each state Commission should conduct a thorough investigation of underlying basis of evidence from other states to determine its relevance to that particular state.⁴¹⁹

AT&T and Covad further argue that BellSouth witness Heartley admitted that the actual performance of BellSouth's OSS can and does vary from state to state.⁴²⁰ For example, BellSouth's OSS differ within its region in the following areas:

- *Account Establishment and management* – When a CLEC enters the market, information is input or received by numerous workgroups operating on a geographic basis. These same workgroups also implement any changes required to support CLECs' ongoing business plans. Careful coordination is required to avoid service disruptions.⁴²¹
- *Pre-ordering* – Pre-ordering performance may not be the same from state to state because BellSouth's legacy systems differ from state to state. The data for all nine states in the BellSouth region are not contained in a single, centrally positioned database. Moreover, pre-ordering for complex services depends on manual processes, workgroups, and information that are organized on a state by state basis.⁴²²
- *Ordering* – Ordering performance is not the same from state to state because BellSouth's legacy systems, needed to accept orders, are unique to each state. Furthermore, the input systems used by BellSouth personnel at the LCSCs differ between former South Central Bell states and Southern Bell states.⁴²³
- *Provisioning, Maintenance and Repair* – BellSouth installs requested services and maintains and repairs existing services by using workgroups which are organized on a geographic basis. Some workgroups are organized state by state, while others are separated into multiple units within a state known as "turfs." As a result of this

⁴¹⁷ *Id.*

⁴¹⁸ *Id.* at p. 21.

⁴¹⁹ *Id.* at p. 21 [Citing Tr. p. 4497 (*Bradbury*)].

⁴²⁰ *Id.* at p. 22 [Citing Tr. p. 4239 (*Heartley*)].

⁴²¹ *Id.* at p. 22 [Citing Tr. p. 4500-4501 (*Bradbury*)].

⁴²² *Id.* [Citing Tr. p. 4501-4502 (*Bradbury*)].

⁴²³ *Id.* [Citing Tr. p. 4501 (*Bradbury*)].

organizational structure, performance data from one state does not accurately reflect performance in another state.⁴²⁴

- *Billing* – Billing is derived from call data collected in 11 BellSouth data centers, each serving a particular geographic area. Performance at one data center may not be comparable to performance at a data center serving a different state.⁴²⁵

Given the above described variations in BellSouth's OSS from state to state, AT&T and Covad assert that the Commission should not rely upon the results of the Georgia third party test when determining the readiness of BellSouth's OSS in Alabama.⁴²⁶

With regard to PWC's attestation concerning the regionality of BellSouth's OSS, AT&T and Covad maintain that BellSouth's reliance on PWC's attestation is misplaced. AT&T and Covad point out that PWC attests to the sameness of BellSouth's pre-ordering and ordering OSS "as of May 3, 2001."⁴²⁷ AT&T and Covad emphasize, however, that the testing of BellSouth's ordering OSS in Georgia took place from November 1999 through February 2001.⁴²⁸ AT&T and Covad contend that because PWC does not attest to the regionality of BellSouth's OSS until May 3, 2001, BellSouth cannot rely on the conclusions from PWC's attestation for dates prior.⁴²⁹ AT&T and Covad accordingly represent that the PWC attestation does not support BellSouth's argument that this Commission should rely on result of the Georgia third party test because PWC does not attest to the regionality of BellSouth's OSS during the period of time when the Georgia third party test was conducted.⁴³⁰

AT&T and Covad further contend that the PWC report has several fundamental flaws. Most importantly, AT&T and Covad assert that the report does not address the key issue of OSS performance, but rather simply states that certain OSS hardware and software were physically similar. AT&T and Covad contend that PWC also failed to review all of the OSS involved in performing pre-ordering functions, i.e. BellSouth's legacy systems. Furthermore, PWC did not review the extent to which systems that support particular states are subject to outages.⁴³¹ AT&T and Covad emphasize that

⁴²⁴ *Id.* at p. 22-23 [*Citing* Tr. p. 4502-4503 (*Bradbury*)].

⁴²⁵ *Id.* [*Citing* Tr. p. 4503 (*Bradbury*)].

⁴²⁶ *Id.* at p. 23.

⁴²⁷ *Id.* at p. 23 [*Citing* BellSouth Exhibit 314; and Tr. p. 4503-4504 (*Bradbury*)].

⁴²⁸ *Id.* [*Citing* BellSouth Exhibit 307 at V-A-34, V-A-37, V-A-39].

⁴²⁹ *Id.* at p. 23 [*Citing* AT&T Exhibit 156 at 72-73 which addresses the impact of BellSouth's preferential treatment of Georgia orders at the time of the attestation, and Tr. p. 5925-5929 (*McElroy*)].

⁴³⁰ *Id.* at pp. 23-24.

⁴³¹ *Id.* at p. 24 [*Citing* Tr. pp. 4504-4505 (*Bradbury*)].

PWC was careful to point out that its examination “was not directed toward establishing whether compliance with the aforementioned criteria would constitute legal compliance with the Federal Communications Commission or any state Public Service Commission orders or regulations and accordingly we express no such opinion.”⁴³²

(x) The Georgia Test does not Establish that BellSouth’s Systems can Handle Commercial Volumes

AT&T and Covad point out that the FCC has stated that an ILEC “must demonstrate that its OSS is designed to accommodate both current demand and projected demand for a competing carriers’ access to OSS functions.”⁴³³ AT&T and Covad maintain that the Georgia volume testing gives no such assurance because it was conducted in an artificial test environment with significantly greater capacity than BellSouth’s production environment.⁴³⁴ AT&T and Covad further maintain that limited tests on the production environment were only a small fraction of those run in the test environment.⁴³⁵ According to AT&T and Covad, the Georgia volume testing also failed to test manual or partially mechanized orders and no stress test was conducted.⁴³⁶

AT&T and Covad assert that KPMG recommended to BellSouth that volume testing be performed in ENCORE, the production environment that processes CLEC orders. Indeed, AT&T and Covad point out that KPMG told BellSouth that “running the volume test in something other than the production environment was not a[s] strong as running that same test in the production environment.”⁴³⁷ BellSouth, however, apparently refused to have the volume test performed on its production environment, a decision which AT&T and Covad maintain is highly unusual.⁴³⁸ AT&T and Covad note that BellSouth told KPMG that its “current systems could not support the volumes 18 months out.”⁴³⁹ In addition, AT&T and Covad contend that BellSouth did not want to incur the cost necessary to upgrade its production environment to a level that would satisfy KPMG’s volume test.⁴⁴⁰

Mr. Weeks of KPMG could recall no other third party test in which volume testing was performed in a test environment rather than the production environment.

⁴³² BellSouth Exhibit 314, Independent Accountants Report dated May 3, 2001.

⁴³³ *Id.* at p. 25 [Citing *Bell Atlantic New York Order* at ¶88].

⁴³⁴ *Id.* [Citing BellSouth Exhibit 355 at 55-56].

⁴³⁵ *Id.* [Citing AT&T Exhibit 166 at p. 240].

⁴³⁶ *Id.* [Citing AT&T Exhibit 166 at p. 219].

⁴³⁷ *Id.* [Citing AT&T Exhibit 166 at p. 219].

⁴³⁸ *Id.* [Citing BellSouth Exhibit 355 at p. 356].

⁴³⁹ BellSouth Exhibit 355 at 57.

Moreover, KPMG has acknowledged that results from the test environment provide no assurance that the production environment performs to the Georgia Public Service Commission's standards, the very standards which BellSouth contends it complies with in Alabama.⁴⁴¹ Moreover, AT&T and Covad note that even if BellSouth plans to upgrade its ENCORE system at some future date, no testing performed thus far demonstrates that such an upgrade would be sufficient to satisfy an appropriate volume test.⁴⁴²

Both KPMG and BellSouth agree that the RSIMMS environment (the environment used for volume testing in Georgia) is more powerful and can process more orders than ENCORE (BellSouth's production environment).⁴⁴³ AT&T and Covad in fact maintain that the Georgia Final Report reveals, on its face, that RSIMMS has at least twice the capacity of BellSouth's production system.⁴⁴⁴ AT&T and Covad also contend that merely upgrading the production environment to mirror the RSIMMS environment in terms of hardware and applications may not be sufficient to ensure that the computing power of the two systems will be identical. In sum, AT&T and Covad argue that KPMG's RSIMMS evaluation provides the Commission with little useful information regarding the capacity of BellSouth OSS to handle increased CLEC volumes.⁴⁴⁵

AT&T and Covad further maintain that KPMG's limited volume testing of BellSouth's production system is not sufficient to establish that BellSouth's systems will be able to handle expected usage. AT&T and Covad assert that the volume KPMG used in its "normal volume" testing was based on the existing capacity of BellSouth's production system, not on projected CLEC volumes.⁴⁴⁶ AT&T and Covad contend that the forecast requirements for ENCORE's capacity at year end 2001 were at least twice BellSouth's stated capacity, thus demonstrating that BellSouth's production environment has only half the capacity necessary to meet projected year end 2001 volumes.⁴⁴⁷

AT&T and Covad further note that KPMG submitted only 24,594 pre-orders and 7,429 orders in the production environment tests. When KPMG ran normal volume

⁴⁴⁰ AT&T Exhibit 166 at 213.

⁴⁴¹ AT&T Post Hearing Brief at p. 26 [*Citing* AT&T Exhibit 166 at 226-227].

⁴⁴² *Id.*

⁴⁴³ *Id.* at p. 5918-5921 (*McElroy*). See also BellSouth Exhibit 355 at 55-56.

⁴⁴⁴ BellSouth Exhibit 307, RSIMMS and ENCORE Systems Review, ("RSIMMS and ENCORE Report") at 7-8].

⁴⁴⁵ BellSouth Exhibit 307, (RSIMMS Report and ENCORE at 5).

testing in BellSouth's artificial test environment, however, the numbers of transactions were based on projected volume and were much greater: 118,000 pre-orders and 35,000 orders.⁴⁴⁸

AT&T and Covad also point out that KPMG's volume testing in Georgia failed to include any testing of the Local Carrier Service Center's (LCSC's) manual or partially mechanized processes.⁴⁴⁹ AT&T and Covad contend that because KPMG only tested BellSouth's automated systems, it failed to consider the potential backlogs caused by inadequate procedures or staffing in the LCSCs. AT&T and Covad maintain that this is a critical area because the LCSCs handle a significant volume of CLEC orders. Indeed BellSouth has blamed many of its performance deficiencies on errors made by inadequately trained LCSC employees.⁴⁵⁰ AT&T and Covad contend that the Florida third party test results will provide this Commission with some indicia regarding the quality of BellSouth's performance in this key area even though KPMG has not yet been able to complete even one day of the volume testing in the production environment in Florida because of BellSouth system problems.⁴⁵¹

AT&T and Covad lastly point out that KPMG did not perform any stress testing in Georgia. Such tests are designed to determine the outer limits of a particular system or an interface's volume capacity. Typically, stress tests are an attempt to continuously escalate the volumes placed through an interface until the interface breaks. AT&T and Covad note that KPMG did not perform any stress testing of BellSouth's RSIMMS test environment or the ENCORE production environment as part of the Georgia third party test. In contrast, stress tests will be conducted in Florida.⁴⁵²

(xi) Key Areas Were Not Tested Adequately in Georgia

AT&T and Covad further contend that the Georgia third party test was not comprehensive in that not all of the key areas were tested in Georgia. AT&T asserts that by design, the Georgia test did not include all areas of testing that had been included in other states such as account management, network design, collocation and interconnection planning, help desk, CLEC training, manual ordering processes, work

⁴⁴⁶ *Id.* at p. 27, [Citing Tr. p. 6076-6077 (Norris)].

⁴⁴⁷ *Id.* at p. 34.

⁴⁴⁸ AT&T Exhibit 166 at 240.

⁴⁴⁹ AT&T Post Hearing Brief at p. 29 [Citing Tr. pp. 5905-5906 (McElroy) and 6078 (Norris)].

⁴⁵⁰ *Id.* [Citing Tr. pp. 3852, 3855-3856 (Pate)].

⁴⁵¹ *Id.* [Citing Tr. p. 6079-6080 (Norris)].

center support, ability to build interfaces, and relationship management. AT&T and Covad note that these areas were tested in New York and are being tested in Florida.⁴⁵³

In addition, AT&T and Covad maintain that in Georgia, KPMG failed to test current interfaces such as OSS 99;⁴⁵⁴ tested only six of the over 80 UNEs which BellSouth claims that it offers CLECs;⁴⁵⁵ and failed to test local number portability measures.⁴⁵⁶ According to AT&T, the aforementioned measures are being tested in Florida.

AT&T and Covad maintain that although the Georgia third party test was supposed to evaluate BellSouth's Change Control Process (CCP), it did not.⁴⁵⁷ An important aspect of CLEC parity with BellSouth's OSS is the ability of CLECs to modify their interfaces to conform with BellSouth's OSS in a timely and efficient manner whenever BellSouth alters its OSS. AT&T and Covad maintain, however, that KPMG's evaluation of BellSouth's CCP focused on the existence of documentation describing the process, not on the appropriateness or adequacy of the process or on the timeliness and adequacy of the implementation.⁴⁵⁸ AT&T and Covad furthermore allege that the more thorough testing in Florida has uncovered a number of change management deficiencies.⁴⁵⁹

AT&T and Covad also point out that CLECs are dependent upon ILECs to provide usage information such as BellSouth's Access Daily Usage Files ("ADUF") or Optional Daily Usage Files ("ODUF") in order to provide their customers with timely and accurate bills. AT&T and Covad represent that during its limited billing testing, KPMG identified several issues concerning the accuracy of the information BellSouth provides. For example, KPMG's billing tests show that for test CLEC invoices, the expected usage did not match the exchange messages interface (EMI) provided by BellSouth. KPMG also determined that significant problems exist in the accumulation of usage data for billing. AT&T and Covad stress that the ability of CLECs to render timely, accurate bills to their customers is completely dependent upon the performance of BellSouth's

⁴⁵² *Id.* at pp. 27-28 [*Citing* Tr. p. 5912 (*McElroy*); and BellSouth Exhibit 355 at 55].

⁴⁵³ *Id.* at pp. 28-29 [*Citing* Tr. pp. 5902-5913 (*McElroy*)].

⁴⁵⁴ *Id.* [*Citing* Tr. p. 5895-5896 (*McElroy*)].

⁴⁵⁵ *Id.* [*Citing* Tr. p. 6053]. NOTE: The 6 UNEs tested were for ordering, provisioning, and billing activities.

⁴⁵⁶ *Id.* [*Citing* Tr. pp. 6053 and 6057].

⁴⁵⁷ AT&T Post Hearing Brief at p. 30 [*Citing* BellSouth Exhibit 307].

⁴⁵⁸ *Id.* [*Citing* Tr. p. 6060 (*Norris*)].

⁴⁵⁹ *Id.* [*Citing* AT&T Exhibit 166 at 205].

systems, yet KPMG's billing testing was insufficient to assure that BellSouth provides CLECs with sufficient, accurate, and complete information.⁴⁶⁰

(xii) **Georgia Third Party Test does not provide an accurate portrait of BellSouth's OSS performance in Alabama**

AT&T and Covad assert that during the third party test in Georgia, KPMG relied extensively on transaction-based tests to measure BellSouth's performance in the areas of pre-ordering, ordering and provisioning, maintenance and repair, and billing. One of the goals of transaction-based testing is to enable the tester to "live the CLEC experience."⁴⁶¹ AT&T and Covad therefore assert that transaction-based testing requires that test transactions be treated like any other. Indeed, the FCC has noted the importance of putting measures in place to ensure that the test or transactions do not receive discriminatory preferential treatment.⁴⁶² AT&T and Covad point out, however, that during the PWC examination of BellSouth's OSS, PWC discovered that LSRs submitted from Georgia and Florida during the third party tests were given preferential treatment at the LCSCs over LSRs submitted from BellSouth's other states.⁴⁶³

AT&T and Covad assert that BellSouth's actions with regard to preferential treatment of the Georgia orders further undermines the validity and integrity of the results of the Georgia third party test. Providing priority handling of certain orders over others at BellSouth's LCSCs artificially inflates test results and performance data involving the orders that were given preferential treatment (e.g. Orders from Georgia and Florida) while at the same time lowering the quality of service provided to orders from other states, such as Alabama.⁴⁶⁴

AT&T and Covad contend that by living the CLEC experience during the test, the third party tester's results should be indicative of what a real CLEC could expect to encounter when it utilizes BellSouth's OSS to compete in Georgia's local markets. AT&T and Covad allege, however, that BellSouth has ensured that the results of certain of the transaction-based tests do not serve as accurate indicators of the current, real-world readiness of BellSouth's OSS because BellSouth gave preferential treatment to orders from Georgia. AT&T and Covad further allege that BellSouth's willingness to

⁴⁶⁰ *Id.* at p. 31 [*Citing* Tr. p. 6083-6085 (*Norris*)].

⁴⁶¹ *Id.* at p. 30 [*Citing* BellSouth Exhibit 307 at II-5].

⁴⁶² *Id.* [*Citing* Bell Atlantic New York Order at ¶¶99-100].

⁴⁶³ *Id.* at p. 32 [*Citing* Tr. pp. 5925-5926 and 5929 (*McElroy*)].

⁴⁶⁴ *Id.*

provide discriminatory, preferential treatment in one known area of the test raises grave concerns regarding the integrity of the entire test.⁴⁶⁵

AT&T and Covad further maintain that many of KPMG's "satisfied" determinations in the Georgia third party test are questionable. They contend that KPMG masked poor performance by improperly relying on a statistical analysis (P-Value) in determining that certain test results were "satisfactory" even though the test results did not satisfy the benchmarks. AT&T and Covad assert that this practice affected almost 30 measures.⁴⁶⁶

AT&T and Covad note that P-Value analysis is a statistical mechanism for determining the likelihood that the difference observed between two data sets was normal, random error. AT&T and Covad contend, however, that such an analysis is not appropriate for Commission established benchmarks.⁴⁶⁷ As an example, AT&T and Covad note that the Georgia Commission determined that coordinated cut-over conversions should be completed within 15 minutes of the scheduled start time. The Georgia Commission included an allowance for random variation in the process by setting the standard at 95% within 15 minutes. By applying a P-Value to that Commission established benchmark, however, AT&T and Covad assert that KPMG set a level of performance lower than that approved by the Georgia Commission.⁴⁶⁸

When statistical analysis could not bring BellSouth's results up to the level of "satisfied," KPMG applied its "professional judgement" to past test results that did not meet standards established by the Georgia Commission.⁴⁶⁹ In the pre-ordering and ordering and provisioning sections of the report, AT&T and Covad represent that 20 tests were deemed satisfied based on KPMG's "professional judgement." Significantly, AT&T and Covad contend that the Georgia test administrator has admitted that application of the Georgia Commission standard - - parity with retail performance - - would require these tests be categorized as "not satisfied."⁴⁷⁰

Moreover, in making its professional judgement, AT&T and Covad represent that KPMG did not perform any independent research, did not consult with or seek the input

⁴⁶⁵ *Id.* at pp. 32-33.

⁴⁶⁶ *Id.* at p. 33.

⁴⁶⁷ *Id.* at p. 33 [*Citing* BellSouth Exhibit 355 at 42-47].

⁴⁶⁸ *Id.* at p. 33.

⁴⁶⁹ AT&T Post Hearing Brief at p. 34 [*Citing* BellSouth Exhibit 355 at 25-26 and 31-36; and Tr. p. 6095 (Norris)].

⁴⁷⁰ *Id.* at p. 34 [*Citing* BellSouth Exhibit 355 at 31-40].

of CLECs regarding the test's impact on their operations, and rarely consulted the Georgia Commission for advice. To the contrary, AT&T and Covad assert that KPMG's exercise of its professional judgement entailed general conversations with other KPMG employees.⁴⁷¹

AT&T and Covad further allege that, KPMG relied heavily on subjective analysis to reach "satisfied" results.⁴⁷² AT&T and Covad contend that BellSouth witness Varner relies on the fact that KPMG found 4% of more than 1,100 tests not satisfied as evidence of BellSouth's systems readiness to support local competition.⁴⁷³ AT&T and Covad contend, however, that this statement must be evaluated in its context. More specifically, AT&T and Covad assert that the majority of the tests involved subjective analysis of documentation and reports rather than the analysis of whether BellSouth *complies* with its documentation or the *adequacy* of its reports. For example, in the pre-ordering test domain, AT&T and Covad point out that 48 of the 81 test points involve review of documentation and other subjective analysis. In the ordering and provisioning test domain, 114 of the 177 test points could be classified as subjective analysis rather than measurements against standards. KPMG found all of these particular tests satisfied. AT&T and Covad assert that such heavy reliance on subjective analysis to reach satisfied results further undermines the reliability of the Georgia third party test.⁴⁷⁴

AT&T and Covad further maintain that KPMG inappropriately aggregated test results despite the June 6, 2000, Order of the Georgia Public Service Commission specifying the disaggregation levels to be used in performing the third party tests. Although KPMG's final report provides data at the levels of disaggregation set forth in the Georgia Commission's June 6, 2000 Order, AT&T alleges that the data was evaluated on an aggregated basis for the purposes of determining whether the tests were satisfied. Indeed, during the Georgia third party test hearing, AT&T and Covad point out that KPMG admitted "our test was not construed with the level of disaggregation specified in the June 6, 2000 Order."⁴⁷⁵ AT&T and Covad contend that as a result of KPMG's actions, BellSouth satisfied certain tests even though it did not meet Georgia Commission established standards for important order types such as

⁴⁷¹ *Id.* at pp. 34-35 [*Citing* BellSouth Exhibit 355 at 31-40].

⁴⁷² *Id.* at p. 35 [*Citing* Tr. pp. 6081-6082 (*Norris*)].

⁴⁷³ Tr. p. 5023 (*Varner*).

⁴⁷⁴ AT&T Post Hearing Brief at p. 35 [*Citing* Tr. p. 6083 (*Norris*)].

orders that allow consumers to keep their telephone numbers when switching carriers.⁴⁷⁶

(xiii) BellSouth Failed to Meet Test Criteria in Key Areas

AT&T and Covad further contend that BellSouth failed to satisfy 20 of KPMG's tests.⁴⁷⁷ Of these 20 tests, KPMG determined that BellSouth's deficiencies in the areas of Timeliness of Responses to Fill Mechanized Orders; Timeliness and Accuracy of Clarifications to Partially Mechanized Orders; and Accuracy of Translation from External (CLEC) to Internal (BellSouth) Service Orders Resulting in Switched Translation and Directory Listing Errors could have a material adverse impact on the ability of CLECs to compete.⁴⁷⁸ AT&T and Covad assert that the tests cited evaluate the basic ability of CLECs to have BellSouth timely process, fill and correctly provision its orders. AT&T and Covad maintain that the only way to know whether BellSouth's performance in these areas is at a level that might be impacting CLECs is to monitor BellSouth's performance.⁴⁷⁹ They note that although the process of monitoring these areas is critical, there are no performance measures included in BellSouth's purported penalty plan that address two of the areas BellSouth did not satisfy.⁴⁸⁰ Moreover, for one of these areas - - Service Order Accuracy - - the data submitted demonstrates that BellSouth failed five of the seven performance metrics.⁴⁸¹

(xiv) KPMG was not an Independent Tester

AT&T and Covad point out that the FCC has recognized that independence is an important factor that weighs heavily on the persuasiveness accorded to a third party test. AT&T and Covad contend that common sense dictates that the use of a third party tester is of little meaningful value if the third party is not independent from the party being evaluated. The FCC, in its *Bell Atlantic New York Order*, made much of the fact that the tester in New York did not work at the direction of Bell Atlantic-New York.⁴⁸² AT&T and Covad point out that in Georgia, however, KPMG was employed by, and

⁴⁷⁵ *Id.* at p. 35-36 [Citing AT&T Exhibit 166 at 82 and Tr. p. 6088 (Norris)].

⁴⁷⁶ *Id.* at p. 36 [Citing Tr. p. 6089-6090 (Norris)].

⁴⁷⁷ *Id.* [Citing BellSouth Exhibit 307].

⁴⁷⁸ *Id.* [Citing BellSouth Exhibit 310].

⁴⁷⁹ *Id.* at p. 37 [Citing BellSouth Exhibit 355 at 101].

⁴⁸⁰ *Id.* [Citing Tr. p. 6100-6101 (Norris)].

⁴⁸¹ *Id.* [Citing BellSouth Exhibit 352 Attachment 1E at 9].

⁴⁸² *Id.* [Citing *Bell Atlantic New York Order* at ¶¶99-100].

reported to, BellSouth.⁴⁸³ AT&T and Covad contend that this direct reporting relationship seriously undermines the reliability of the Georgia test.

AT&T and Covad also point out that the Florida Commission noted that it was hesitant to rely on the Georgia third party test because of concerns over the independence of KPMG. As a result, the Florida Commission decided to conduct its test similar to the way in which the third party tests in Pennsylvania and New York were conducted. As the Florida Commission correctly pointed out, the OSS test plan in Georgia was drafted by BellSouth, not an independent third party.⁴⁸⁴

AT&T and Covad contend that the designer of a test plan controls the scope, structure and basic assumptions of a test and is thus able to influence test parameters and standards in such a way as to guarantee success.⁴⁸⁵ AT&T and Covad assert, for instance, that KPMG willingly accepted information or explanations from BellSouth without independently verifying their accuracy or completeness. As Mr. Weeks of KPMG explained, “if we have characterized something as “BellSouth has stated,” and didn’t follow that up with some words to we tested or didn’t test that, then the absence of that wording suggests we just left it.”⁴⁸⁶

(xv) Crucial Test Activities are not Finished in Georgia

AT&T and Covad further contend that the Georgia third party test metrics evaluation is incomplete as a number of important exceptions remain open. AT&T and Covad assert that this is the result of KPMG’s inability to verify that BellSouth’s reported data is accurate because BellSouth does not have data retention policies in place to allow thorough audits of its data.⁴⁸⁷

AT&T and Covad further point out that the Georgia Commission has ordered KPMG to perform an additional audit of three months of BellSouth’s data to verify its accuracy. AT&T and Covad contend that KPMG’s additional audit will expose details of BellSouth’s performance beyond what was revealed by the Georgia third party test and is relevant evidence that this Commission should consider. According to AT&T and Covad, all of the aforementioned data will assist the Commission in identifying those

⁴⁸³ *Id.* [Citing BellSouth Exhibit 307 at I-2].

⁴⁸⁴ *Id.* at pp. 37-38 [Citing Tr. p. 6068-6069 (Norris)].

⁴⁸⁵ *Id.* [Citing Tr. p. 6069-6070 (Norris)].

⁴⁸⁶ *Id.* at pp. 38-39 [Citing Tr. pp. 6070-71 (Norris) (Quoting transcript of deposition of Michael Weeks, Georgia Public Service Commission, Docket No. 8354-U, May 4, 2000, AT&T Exhibit 169 at 127: 2-6)].

⁴⁸⁷ *Id.* at p. 39 [Citing Tr. p. 3286-3287 (Norris)].

areas in which modification must be made to ensure that CLECs will not be put at a competitive disadvantage in Alabama because certain BellSouth data systems continue to function improperly.⁴⁸⁸

(xvi) OSS Testing in Florida Continues to Uncover Significant Problems in Key Areas

AT&T and Covad point out that at the time of the hearings in Alabama, the Florida third party test had almost 100 open deficiencies in several critical areas including volume testing, order management, and metrics. AT&T and Covad represent that roughly two thirds of those deficiencies are in areas not tested in Georgia.⁴⁸⁹ Also troubling to AT&T and Covad is the fact that a significant number of remaining Florida observations and exceptions are in areas that were not identified, or that were identified but were subsequently determined to be satisfied, by the Georgia tester. AT&T and Covad assert that the ongoing Florida test confirms the unreliability and limitations of the Georgia third party test. AT&T and Covad accordingly argue that the flawed Georgia test cannot provide persuasive evidence supporting BellSouth's position and urge the Commission to disregard the Georgia test results when performing its evaluation.⁴⁹⁰

(d) The Position of ITC DeltaCom

(i) OSS Access

ITC DeltaCom maintains that BellSouth does not provide nondiscriminatory access to its OSS because BellSouth retail representatives have notice of pending requests but CLECs do not. ITC DeltaCom maintains that BellSouth's failure to provide electronic indications of pending activity to CLECs adds expense and delay to the customers of CLECs since CLEC orders must be clarified back to the CLEC if there is pending activity.⁴⁹¹ ITC DeltaCom additionally contends that BellSouth representatives can view a CSR of any CLEC, but a CLEC cannot view the CSR of another CLEC via LENS, TAG or EDI.⁴⁹²

ITC DeltaCom further maintains that the OSS interface outages experienced by CLECs in Alabama render BellSouth's access to its OSS unstable and discriminatory.

⁴⁸⁸ *Id.* at pp. 39-40 [*Citing* Tr. p. 6101-6102 (*Norris*)].

⁴⁸⁹ *Id.* at p. 40 [*Citing* Tr. p. 6039-6040 (*Norris*)].

⁴⁹⁰ *Id.* at p. 40 [*Citing* Tr. p. 6048-6049 (*Norris*)].

⁴⁹¹ ITC DeltaCom Post Hearing Brief at p. 12 [*Citing* Tr. p. 3630 (*Conquest*)].

⁴⁹² *Id.* [*Citing* Tr. p. 4143-4146 (*Pate*)].

For the month of May 2001, ITC DeltaCom contends that BellSouth had outages on 18 of the 31 calendar days for one or more interfaces. ITC DeltaCom asserts that this high number of outages experienced by CLECs creates an unstable environment such that ordering and provisioning are impacted.⁴⁹³

ITC DeltaCom points out that despite BellSouth's general contention that system outages are reported on BellSouth's web site, only those outages that are 20 minutes or longer are reported on the web site for purposes of change control. Despite the testimony of BellSouth's witness Mr. Pate that the time outages are reported should always be reflected on the web site,⁴⁹⁴ ITC DeltaCom points out that Mr. Pate conceded that outage number 1721 on March 29, 2001, did not include the time that the problem was reported.⁴⁹⁵ ITC DeltaCom further notes that Mr. Pate agreed that there probably are many instances where the time that outages are reported is not provided.⁴⁹⁶

ITC DeltaCom maintains that the number of outage reports for BellSouth's OSS is incredibly high. For example, between December of 2000 and July 26, 2001, ITC DeltaCom asserts that there were 627 outage reports. ITC DeltaCom points out that it is unknown how many more outage reports would be listed on the web site if every outage that was validated but lasted 20 minutes or less was included. ITC DeltaCom notes that Mr. Pate of BellSouth agreed that it is possible that an outage could last less than 20 minutes and reoccur frequently in a 24 hour period and that the outage would not be reported on the BellSouth web site because it did not last longer than 20 minutes or more at any given time.⁴⁹⁷

(ii) Change Management

ITC DeltaCom further alleges that BellSouth's change management process is generally inadequate and precludes CLECs from making informed, efficient decisions regarding the prioritization of work on gateway interfaces that will be affected by upcoming programming releases. ITC DeltaCom in fact argues that BellSouth should provide a metric which will enable the CLECs to prioritize work required for the items requested by CLECs based on business need.

⁴⁹³ *Id.* [Citing Tr. p. 3628 (*Conquest*); and ITC DeltaCom Exhibits 1 and 22].

⁴⁹⁴ *Id.* at p. 13 [Citing Tr. p. 4111 (*Pate*)].

⁴⁹⁵ *Id.* [Citing Tr. p. 4111-4117 (*Pate*)].

⁴⁹⁶ *Id.* [Citing Tr. p. 4118 (*Pate*)].

⁴⁹⁷ *Id.* at p. 14 [Citing Tr. p. 4118-4131 (*Pate*)].

ITC DeltaCom further argues that even though BellSouth claims that the estimated programming hours concerning its interfaces information is proprietary, other ILECs provide release capacity information. ITC DeltaCom thus argues that BellSouth should provide the estimated programming such that CLECs can better prioritize their workload.⁴⁹⁸

(iii) UNE Combinations

ITC DeltaCom also notes that BellSouth refuses to provide access to combinations of UNEs that are ordinarily combined in its network and thus does not provide nondiscriminatory access to UNEs for purposes of Checklist Item 2. ITC DeltaCom maintains that BellSouth's actions in this regard make the process of converting customers to UNE-P complex and expensive thus impeding local competition.⁴⁹⁹

ITC DeltaCom points out that BellSouth has been ordered to provide unbundled access to new combinations in the states of Georgia, Kentucky, South Carolina, Tennessee, Louisiana, and Mississippi. ITC DeltaCom asserts that BellSouth's failure to provide such access in Alabama constitutes discrimination in violation of Checklist Item 2. In fact, ITC DeltaCom asserts that no BOC has successfully obtained interLATA authority without at least a voluntary commitment to combine for entrants those elements that it ordinarily combines for itself.⁵⁰⁰

ITC DeltaCom further argues that given the data it introduced indicating that 21% of Alabama businesses open or close in a year, it is ridiculous for BellSouth to argue that every single existing Alabama BellSouth customer can be converted to UNE-P when BellSouth knows that a large number of those customers will either add new lines or move. ITC DeltaCom thus asserts that BellSouth's refusal to provide access to new combinations impedes the development of competition in Alabama.⁵⁰¹

ITC DeltaCom further argues that BellSouth's position with regard to UNE--P is inherently inconsistent in that BellSouth admits that it has an obligation to provide loops to CLECs at cost based TELRIC prices to serve customers where no loops are currently provisioned – i.e. new loops. BellSouth has admitted that for such customers in its

⁴⁹⁸ *Id.* at p. 15 [*Citing* Tr. p. 3629-3620 (*Conquest*)].

⁴⁹⁹ *Id.* at p. 18-19 [*Citing* Tr. p. 2503-2507 (*Gillan*)].

⁵⁰⁰ *Id.* [*Citing* Tr. p. 2506 (*Gillan*)].

⁵⁰¹ *Id.* at p. 19 [*Citing* Tr. p. 2504 (*Gillan*)].

serving area, it must sell CLECs a loop at cost based TELRIC prices even though no such loop is in place today. ITC DeltaCom points out that even though BellSouth will sell CLECs that loop at cost based TELRIC prices, BellSouth will not sell CLECs that very same loop connected to the BellSouth switch as a loop switching UNE combination (UNE-P).⁵⁰²

ITC DeltaCom urges the Commission to follow the lead of the state commissions in Georgia, Kentucky, South Carolina, and Tennessee. In particular, ITC DeltaCom urges the Commission to require BellSouth to provide access to combinations of UNEs that are ordinarily combined in its network.⁵⁰³

(e) The Position of WorldCom

(i) Nondiscriminatory Access to OSS

WorldCom asserts that the low levels of competition being experienced in Alabama today do not provide sufficient evidence to determine whether BellSouth is providing nondiscriminatory access to its OSS. WorldCom further argues that even if it is assumed for the sake of argument that BellSouth's systems are regional and that its OSS in Georgia is the same in all respects as the OSS BellSouth provides in Alabama, the still incomplete Georgia third party test is not sufficient for BellSouth to meet its burden in Alabama. WorldCom moreover asserts that its considerable commercial experience in Georgia demonstrates that there are major problems to BellSouth's OSS in Georgia notwithstanding the results to date of the Georgia third party test.⁵⁰⁴

WorldCom notes that it submits UNE-P orders in Georgia using the EDI interface. In September 2001, WorldCom represents that it submitted more than 36,000 LSRs in Georgia, which constituted approximately 86% of the electronic EDI UNE orders for the entire BellSouth region, 56% of all EDI orders for the region, and 38% of all electronic UNE orders for the region.⁵⁰⁵ Despite that substantial volume of orders, however, WorldCom asserts that BellSouth's flawed OSS is preventing the full commercial volumes in Georgia that are seen in states that have created the conditions for broad-based residential market local entry.⁵⁰⁶

⁵⁰² *Id.* [Citing Tr. p. 2871 (*Guepe*)].

⁵⁰³ *Id.*

⁵⁰⁴ WorldCom Post Hearing Brief at p. 12.

⁵⁰⁵ *Id.* [Citing Tr. pp. 5810-5814 (*Varner*); and BellSouth Exhibit 352].

⁵⁰⁶ *Id.* [Citing Tr. pp. 3396-3397, and 4553 (*Lichtenberg*)].

WorldCom maintains that it is experiencing a high reject rate in Georgia. For example, in June 2001 WorldCom represents that it saw 25% of its LSRs rejected. WorldCom maintains that approximately 22% of those rejects were address rejects that occurred because of BellSouth's requirement that WorldCom provide a complete service address for every customer even though no physical installation of facilities was required. WorldCom maintains that it has continued to experience roughly the same reject rates since June and maintains that such a high reject rate demonstrates flaws in BellSouth's ordering process.⁵⁰⁷

WorldCom further asserts that BellSouth provides substantially better flow through to itself than it does for CLECs. WorldCom contends that BellSouth's retail residential orders were processed electronically without manual intervention approximately 94% of the time in June, July, August, and September 2001.⁵⁰⁸ BellSouth reported that it achieved flow through for WorldCom for its Georgia launch of between 63.60% and 79.65% for June, July, August, and September and reported percent flow through between 66.5% and 83.65% for the same period. WorldCom maintains that for the CLEC industry as a whole, the UNE flow through results for this period were even worse – between 57.91% and 68.96% for achieved flow through and between 67.29% and 80.82% for percent flow through. WorldCom asserts that even CLEC flow through in the aggregate, including UNEs and resale, was weak compared to what BellSouth provides to itself with achieved flow through of between 69.28% to 77.71% and percent flow through between 77.39% and 87.42%.⁵⁰⁹

In any event, WorldCom asserts that BellSouth has failed to provide the Commission with consistent, reliable flow through data as evidence by the substantial revisions to the June, July, and August, 2001 flow through reports filed by BellSouth in November of 2001.⁵¹⁰ These figures show massive changes in the reported data. For instance, for July, BellSouth initially reported CLEC UNE achieved flow through of 64.34% and percent flow through of 90%. Percent flow through excludes orders designed to fall out for manual processing while achieved flow through includes such LSRs. After the revisions submitted by BellSouth, the achieved flow through figure had

⁵⁰⁷ *Id.* [Citing Tr. p. 4559 (*Lichtenberg*)].

⁵⁰⁸ *Id.* [Citing BellSouth Exhibits 347-349 and 352].

⁵⁰⁹ *Id.*

dropped more than six percentage points to 57.91% and the percent flow through figure had dropped more than 22 percentage points to 67.29%.⁵¹¹ Likewise, in August 2001, BellSouth initially reported CLEC UNE achieved flow through of 78.58% and percent flow through of 95.36%. By the time BellSouth had completed its revisions, however, achieved flow through had dropped more than 10 percentage points to 68.50% and percent flow through had decreased more than 14 percentage points to 80.82%.⁵¹²

To make matters worse, WorldCom asserts that BellSouth's reported flow through data reflects an unexplained, massive increase in flow through from July to August. For instance, CLEC UNE achieved flow through rose more than 10 percentage points and CLEC UNE percent flow through increased more than 13 percentage points.⁵¹³ WorldCom asserts that the record is thus insufficient to adequately conclude that BellSouth's flow through is sufficient for §271 purposes.

WorldCom alleges, however, that the Commission does have enough information to conclude that BellSouth's reject and flow through rates can, and should, be improved. WorldCom asserts that other Bell companies deal with the problems in this area in part by requiring only the customer name and telephone number on a LSR when migrating a customer to CLEC service. WorldCom notes that it requested this improvement of BellSouth on August 9, 2000.⁵¹⁴ WorldCom further notes that the Georgia Commission, in its recent §271 order, required BellSouth to implement this change by November 3, 2001.⁵¹⁵

WorldCom asserts that another change which CLECs have requested to reduce the frequency of number rejects is for BellSouth to send CSRs in "fully parsed" format. WorldCom notes that fully parsed CSRs would enable CLECs to populate LSR customer information fields automatically and would assist in integrating, pre-ordering and ordering, as well as eliminating another source of rejects. WorldCom contends that CLECs requested parsed CSRs in 1999.⁵¹⁶

⁵¹⁰ *Id.* at p. 13 comparing WorldCom Exhibit 36 and BellSouth Exhibit 347; BellSouth Exhibits 350 and 348; BellSouth Exhibits 351 and 349.

⁵¹¹ *Id.* at p. 14 comparing BellSouth Exhibits 350 and 348.

⁵¹² *Id.* comparing BellSouth Exhibits 351 and 349.

⁵¹³ *Id.* comparing BellSouth Exhibits 348 and 349.

⁵¹⁴ *Id.* [Citing Tr. p. 4071-4072 (*Pate*)].

⁵¹⁵ *Id.* at p. 15 [Citing *In Re: Consideration of BellSouth Telecommunications, Inc.'s Entry into InterLATA Services Pursuant to §271 of the Telecommunications Act of 1996*, Georgia Docket No.'s 6863-U, 7253-U, and 8354-U, Order (Oct. 19, 2001)].

⁵¹⁶ *Id.* at 15 [Citing Tr. p. 4645 (*Lichtenberg*)].

WorldCom notes that the Georgia Public Service Commission finally ordered BellSouth to provide parsed CSRs by January 5, 2002, in its October 19, 2001 §271 Order. WorldCom notes that South Carolina has likewise ordered BellSouth to implement fully parsed CSRs.⁵¹⁷ Rather than provide fully fielded, parsed CSRs, however, MCI contends that BellSouth apparently intends to provide a watered down product in response to the Georgia §271 Order.

Besides preventing full commercial entry, WorldCom asserts that a high level of manual processing of electronic UNE-P migration orders harms consumers in other ways. In the worst case scenario, WorldCom argues that it leads to customers losing dial tone – an unacceptable result given that no wiring change occurs in converting BellSouth retail service to WorldCom UNE-P service. Nonetheless, through July 2001, WorldCom asserts that 420 WorldCom residential end users had lost dial tone.⁵¹⁸ WorldCom asserts that the problem has continued since then. Through September 23, 2001, WorldCom represents 1,988 customers in Georgia, or 3% of WorldCom's customers, reported a loss of dial tone (or in some cases the inability to receive calls) on their lines. WorldCom asserts that 536 of those customers lost dial tone within 10 days of migration and 1,214 lost dial tone within 30 days of migration. In each case, WorldCom represents that the customer who lost dial tone had working telephone service before being migrated to WorldCom and then lost dial tone after migration.⁵¹⁹

WorldCom challenges BellSouth's attempt to dismiss the loss of dial tone problems by assessing a sample of 141 LSRs submitted by WorldCom. Worldcom in fact disputes BellSouth's claim that in most cases when it tests a customer's lines following loss of dial tone, no problems are found, or the problems discovered are attributable to an end user problem such as inside wiring or some other problem not related to the migration of the line to WorldCom.⁵²⁰ WorldCom asserts that BellSouth's explanations in this regard strain credibility and are unsatisfactory because BellSouth's testing may have occurred after the service in question had been reconnected, and hence no problem was found. WorldCom also questions why BellSouth has not explained why there are so many unrelated problems. Indeed, since its launch in

⁵¹⁷ *Id.* [Citing *In Re: Application of BellSouth to Provide In-Region InterLATA Services Pursuant to §271 of the Telecommunications Act of 1996*. South Carolina Docket No. 2001-209-C (Nov. 6, 2001) ("South Carolina Order")].

⁵¹⁸ WorldCom Post Hearing Brief at p. 16 [Citing Tr. p. 4647 (*Lichtenberg*)].

⁵¹⁹ *Id.* [Citing Georgia Louisiana Declaration ¶41].

Georgia, WorldCom argues that it has seen a steady stream of customers losing dial tone after migration in numbers that cannot be explained away by random chance.⁵²¹

WorldCom asserts the loss of dial tone experienced by its customers is, at least in part, attributable to BellSouth's two order process which involves a "D" order to disconnect a customer's old service and a "N" order to establish new service with a CLEC. If those orders are not related and properly sequenced – as can happen when manual intervention occurs during the ordering process when the BellSouth representative must enter specific codes – the customer may lose dial tone.⁵²²

WorldCom asserts that BellSouth has known that the two order process can lead to the loss of dial tone for some time and in fact, changed the two order process for resale to a single "C" order in 1998.⁵²³ WorldCom notes that in 1998, BellSouth's view was that the disconnects that were occurring then "were a necessary, albeit unfortunate, side effect of BellSouth's old customer migration system."⁵²⁴ BellSouth nonetheless chose not to implement the single "C" order process when implementing UNE-P and still has not done so.⁵²⁵

WorldCom notes that the Georgia §271 Order directed BellSouth to change to a single "C" ordering process for UNE-P by January 5, 2002. WorldCom asserts that this process, among other things, must be in place before BellSouth can claim that it provides parity service.⁵²⁶

WorldCom notes that any time a CLEC sends an LSR to BellSouth, a CLEC should receive certain "notifiers" in reply. WorldCom maintains that it has experienced problems receiving certain notifiers - - FOCs and completion notices - - from BellSouth. WorldCom notes that if it does not receive an FOC, it does not know whether or when BellSouth will provision service for WorldCom's customers. If WorldCom does not receive a completion notice, it does not know when that service has been provisioned and that it can begin billing its customer.⁵²⁷

WorldCom asserts that the use of value added networks ("VANs") contributes to the missing notifier problem. Because BellSouth and WorldCom each use their own

⁵²⁰ *Id.* [Citing Tr. pp. 4455-4458 (Ainsworth)].

⁵²¹ *Id.* [Citing Tr. p. 4548 (Lichtenberg)].

⁵²² *Id.* at p. 17 [Citing Tr. p. 945 (Pate); and Tr. p. 1277 (Ainsworth)].

⁵²³ *Id.* [Citing Tr. p. 958 (Pate)].

⁵²⁴ *Id.* [Citing Tr. p. 963 (Pate); and WorldCom Exhibit 23].

⁵²⁵ *Id.* [Citing Tr. p. 959 (Pate)].

third party VAN, the route that such notifiers must travel from BellSouth to WorldCom creates potential for problems.⁵²⁸ WorldCom notes that the industry standard solution is to use the “interactive agent,” which passes the notifiers in real time directly from one party to another in a secure manner that allows the parties to track notifiers so that they do not become lost in the system. WorldCom notes that the interactive agent was requested of BellSouth on September 26, 2000 through the Change Control Process but has not yet been scheduled for implementation. WorldCom asserts that BellSouth’s foot dragging with regard to the interactive agent is yet another indication that its change management process is inadequate and cannot be relied upon to address areas of discriminatory access to BellSouth’s OSS.⁵²⁹

WorldCom also asserts that it has experienced billing difficulties because of inadequacies in BellSouth’s billing systems. WorldCom notes that after a CLEC order is provisioned, BellSouth updates its CRIS database to reflect that the CLEC has the customer. In a number of instances, WorldCom asserts that BellSouth’s billing systems cannot process the update request electronically which means that manual handling will be required. While the update request is being handled manually, BellSouth continues to bill the end user and will not send a CLEC a wholesale bill for an end user that has chosen the CLEC’s service.⁵³⁰ Double billing of a customer may result because the CLEC receives a completion notice once the order has been completed in the Service Order Control (“SOCs”) System before the billing record update process occurs. WorldCom asserts that this issue must be satisfactorily addressed before the Commission can recommend interLATA authority for BellSouth.⁵³¹

WorldCom asserts that the foregoing discussion makes clear that BellSouth’s change management process does not properly function. Although the change management process appears to give CLECs some influence over what changes are made to BellSouth’s OSS in an order of priority, WorldCom asserts that BellSouth has in practice “slow rolled” many CLEC requests for much needed improvements, in some cases for years. WorldCom asserts that before the Commission can have any

⁵²⁶ *Id.*

⁵²⁷ *Id.* at pp. 17-18.

⁵²⁸ *Id.* at p. 18 [*Citing* Tr. p. 4092-4093 (*Pate*)].

⁵²⁹ *Id.* [*Citing* Tr. p. 4096-5001 (*Pate*)].

⁵³⁰ *Id.* [*Citing* Tr. p. 1867-1875 (*Scollard*)].

⁵³¹ *Id.* at pp. 18-19 [*Citing* Tr. p. 1874 (*Scollard*); and 4550-4551 (*Lichtenberg*)].

confidence that BellSouth will continue to update and improve its OSS, the change management process itself should be modified so that CLEC change requests are implemented within a reasonable time.⁵³²

(ii) The Georgia Third Party Test

WorldCom further asserts that the Commission should decline BellSouth's invitation to rely on the Georgia third party test to satisfy the Telecom Act's nondiscrimination standard. WorldCom particularly notes that the Georgia third party test did not provide satisfactory evidence for FCC approval in the initial Georgia/Louisiana application BellSouth filed with the FCC. WorldCom moreover asserts that BellSouth's claim that its systems are regional is highly suspect.⁵³³

WorldCom maintains that even if the Georgia third party test were complete, it would not be dispositive in Alabama. WorldCom contends that the significant problems it has experienced during its local residential launch in Georgia strongly suggest that the Georgia test failed to drive out all of the problems with BellSouth's OSS. In fact, WorldCom asserts that the Georgia test could not have done so because it only examined BellSouth's old ordering system, not the newer "OSS 99" system that WorldCom is utilizing.⁵³⁴

WorldCom concludes that the third party test currently being conducted by the Florida Public Service Commission is far superior to the Georgia test and is detecting a large number of OSS flaws.⁵³⁵ To the extent the Commission relies on third party testing at all, WorldCom asserts that the Commission should look to the Florida test rather than the Georgia test.

(iii) UNE Combinations

WorldCom further asserts that BellSouth discriminates against CLECs with respect to the ordering of combinations of DS-1 loops and DS-1 transport ("DS-1 combos," also known as "EELS"). WorldCom contends that BellSouth retail representatives may order so called MegaLINK circuits which are functionally equivalent to DS-1 combos via the electronic ROS ordering system which enables BellSouth representatives to use point and click technology with pull down screens and automatic

⁵³² *Id.* at p. 19.

⁵³³ *Id.* at p. 19 [*Citing* Tr. p. 4298-4303 (*Hartley*) noting the discretion of BellSouth personnel in the field to develop their own solutions to problems as they arise].

⁵³⁴ *Id.* at p. 20 [*Citing* Tr. p. 5940 (*McElroy*)].

population of data from BellSouth's systems. CLECs, on the other hand, are required to order DS-1 combos using the manual LSR process which is dependent on the use of a fax machine. WorldCom asserts this stark contrast constitutes discriminatory access to OSS. WorldCom concludes that BellSouth must provide electronic access for the ordering of DS-1 combos through an electronic LSR process and until such a process is developed, BellSouth must allow CLECs to use the electronic LSR process to place such orders.⁵³⁶

WorldCom further notes that BellSouth refuses to combine network elements that it ordinarily combines for itself thereby increasing CLEC costs and decreasing carrier reliability.⁵³⁷ WorldCom asserts that as a matter of policy, BellSouth's position leads to absurd consequences.⁵³⁸

With regard to federal law, WorldCom asserts that FCC Rule 51.315(b)⁵³⁹ requires that "[e]xcept upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently *combines*" (emphasis added). WorldCom maintains that there can be no dispute that BellSouth currently combines UNEs such as local loops and switch ports, creating a loop-port switch combination.⁵⁴⁰ Because BellSouth currently combines those elements of its network, it must, pursuant to FCC Rule 51.315(b), make those elements available to CLECs on a combined basis and at prices that reflect the cost that would be incurred to provide these network elements in combination.⁵⁴¹

WorldCom notes that the U.S. Supreme Court affirmed Rule 51.315(b) and that rule remains in effect today.⁵⁴² WorldCom further notes that the FCC, in its *UNE Remand Order*, cited back to its intentions when drafting Rule 51.315(b) in the *First Report and Order* and concluded that the proper reading of "currently combines" in Rule 51.315(b) means "ordinarily combined within their [the CLECs'] network in the manner in which they are typically combined."⁵⁴³ WorldCom thus contends that the Commission should require BellSouth to provide UNEs to WorldCom in combined form when those

⁵³⁵ *Id.* [Citing Tr. p. 5888-5922 (*McElroy*)].

⁵³⁶ *Id.* at p. 20 [Citing Tr. p. 1011-1013 (*Pate*)].

⁵³⁷ *Id.* [Citing Tr. p. 2503 (*Gillan*)].

⁵³⁸ *Id.* [Citing Tr. p. 310-315 (*Ruscilli*)].

⁵³⁹ 47 CFR 51.315(b).

⁵⁴⁰ *Id.* at p. 21 [Citing Tr. p. 310 (*Ruscilli*)].

⁵⁴¹ *Id.* at p. 21 [Citing 47 CFR 51.501-51.513].

⁵⁴² *Id.* at p. 21 [Citing *AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721 at 736-737 (1999)].

⁵⁴³ *Id.* [Citing *UNE Remand Order* at ¶4479].

UNEs are ordinarily combined within BellSouth's network and in the manner in which they are typically combined.

WorldCom further asserts that BellSouth's UNE pricing is not cost based failing to meet the Act's "cost based" requirements in several ways, including: (1) the current UNE rates for unbundled local loops are not based on a scorched node cost model; (2) the current UNE rates for unbundled loop/port combinations are based on antiquated technology; and (3) certain UNE rates have yet to be established based on detailed review by this Commission. WorldCom raises specific arguments with regard to each of the points listed above. As we previously noted, however, the proper place for those arguments was in Docket 27821, the Commission's Generic UNE Cost Docket which was established specifically for purposes of addressing revised UNE rates for BellSouth. We do, however, concur with WorldCom's arguments that BellSouth will not have complied with Checklist Item 2 until cost based rates have been established for all of the required UNEs.⁵⁴⁴

(f) The Position of KMC

KMC maintains that BellSouth's OSS does not provide just, reasonable or nondiscriminatory access for CLEC loop orders because BellSouth fails to verify that adequate facilities exist prior to confirming orders and fails to distribute available facilities in a nondiscriminatory fashion. KMC alleges that following a receipt by BellSouth of an order from a CLEC, BellSouth sends a FOC that establishes the install date without checking reliable records to determine whether it has facilities to actually meet the due date.⁵⁴⁵ KMC alleges that frequently, BellSouth's own technicians find a record discrepancy or defective facility when they arrive to install the service. KMC asserts that this causes install dates to be missed.

KMC alleges that this failure-prone process has an extremely negative effect on competitors and cannot be justified because there is no equivalent to a FOC on the retail side. KMC further contends that BellSouth has submitted no credible evidence indicating the frequency with which it advises its retail customers that facilities are not available and thus cannot claim parity with its retail customers.⁵⁴⁶

⁵⁴⁴ WorldCom Post Hearing Brief pp. 8-11.

⁵⁴⁵ KMC Post Hearing Brief p. 6 [*Citing* Tr. p. 3679 (*Weber*)].

⁵⁴⁶ *Id.* at pp. 6-7.

KMC represents that the evidence in the record does clearly indicate, however, that BellSouth is favoring its own retail customers when it comes to assigning available facilities. For example, KMC alleges that BellSouth's own data reveals that over three fourths of the CLEC high capacity loop orders ran into a lack of facility problems in July.⁵⁴⁷ When compared to BellSouth's retail performance for the same time period, KMC contends that more than twice the number of CLEC high capacity loop orders ran into lack of facility problems.⁵⁴⁸

KMC further argues that the provisioning aspects of BellSouth's OSS are insufficient to enable loop provisioning in accordance with the checklist requirements. KMC asserts that BellSouth's loop provisioning performance is severely deficient due in part to OSS related problems and BellSouth's failure to provide adequate notice when jeopardy conditions exist. More specifically, KMC asserts that BellSouth fails to provide adequate notice of "pending facility" conditions, despite the knowledge that KMC and other CLECs rely upon the FOC in scheduling appointments with their own customers.⁵⁴⁹ KMC maintains that BellSouth's own performance reports reveal that BellSouth failed to provide adequate notice of the jeopardy conditions before its notices were sent in June.⁵⁵⁰

(g) The Additional Points Raised by Covad⁵⁵¹

(i) Nondiscriminatory Access to OSS

Covad asserts that BellSouth's LENS interface is not functional for an inordinate amount of time and thus affects Covad in several significant ways. For example, Covad asserts that when LENS is unavailable, it is forced to first to pursue expensive and time consuming manual loop makeup inquiries that slow Covad's ordering process significantly and reduce customer satisfaction. Further, since BellSouth requires CLECs to submit an electronic order with a reservation identification number (RESID) obtained through loop makeup, Covad cannot submit any orders when LENS is nonfunctional.

⁵⁴⁷ *Id.* at p. 7 [Citing July Summary Metric at B-2-5-19]

⁵⁴⁸ *Id.* [Citing June Summary Metric at B.2.5.6].

⁵⁴⁹ *Id.* at pp. 7-8 [Citing Tr. p. 3679 (Weber)].

⁵⁵⁰ *Id.* [Citing June Summary Metrics A.2.9.2 and A.2.10.1].

⁵⁵¹ This subsection addresses the additional points raised during the proceedings in this cause by Covad witness Ms. Collette Davis which were not *per se* addressed in the Joint Post Hearing Brief which was submitted by AT&T and Covad.

Covad further asserts that the unavailability of LENS results in substantial loss production time for Covad employees.⁵⁵²

Covad also alleges that BellSouth does not provide adequate documentation which supports LENS. Covad recognizes that BellSouth developed LENS to support numerous UNEs, but maintains that BellSouth did not include adequate documentation explaining the unique inputs necessary to successfully order items such as XDSL loops via LENS. In particular, Covad maintains that LENS' up front auto clarification process allows orders with simple formatting errors to slip through only to be returned to Covad later as rejects or requests for clarification. Covad represents that it must supplement such orders and resubmit them to BellSouth.

Covad asserts that BellSouth has no incentive to improve its documentation on additional LENS releases or changes to LENS. Covad further asserts that because the Georgia KPMG test did not test LENS, there is no accurate information available to the Commission to use in this proceeding to determine that BellSouth has met its obligations to provide functional, operationally ready OSS systems for CLECs.⁵⁵³

Covad also expresses concerns regarding BellSouth's lack of a central database or system that stores all accurate information on CLEC orders. Covad asserts that the multiple databases utilized by BellSouth forces Covad to search through numerous reports, databases, and interfaces to obtain accurate information on the status of its orders. Covad asserts that due to the lack of data, inaccurate data, and inconsistent data continually found in the various reports, Covad wastes substantial time in the process of determining the status of its orders as they move through the ordering and provisioning process. The lack of a single source of information also forces Covad to call the Local Carrier Service Center ("LCSC") to obtain the status of some orders, a process that Covad maintains is inefficient for Covad and BellSouth.⁵⁵⁴

Covad maintains that BellSouth's retail operations do not have to search for information from the variety of sources that CLECs do in order to obtain status information on orders. Covad in fact maintains that there is no doubt that CLECs face a much more difficult task in obtaining accurate information regarding the status of orders. Covad thus concludes that BellSouth has not provided it and other CLECs with

⁵⁵² Tr. p. 3720 (*Davis*).

⁵⁵³ Tr. p. 3721-3722 (*Davis*).

nondiscriminatory access to OSS necessary to enable Covad to compete effectively in Alabama.⁵⁵⁵

Covad expresses particular concern with BellSouth's failure to provision accurate service order completions for its Line Sharing Orders. Covad asserts that even though it depends upon BellSouth to provide accurate service order completion notifications for line shared loops, BellSouth has designed its line sharing system so that they may generate a record indicating that an order is complete when in fact the provisioning work on that order has not been done.

Covad represents that when it submits a local service request for a line shared loop, BellSouth returns a FOC, including a date on which the loop will be delivered ("due date"). Then, irrespective of whether the work is done in the central office to actually provision the loop on the due date, BellSouth's systems will "auto-complete" the order when the due date arrives. Thus, when Covad's service delivery personnel check the BellSouth Order Tracking System ("CSOTS") to determine if the loop has been provisioned, it will report the order as provisioned even if the work has not been done. Covad asserts that in order to verify whether the work has actually been done, it is forced to check other databases and compare records, a process which is both cumbersome and inefficient.

Covad maintains that BellSouth's refusal to send Covad an accurate service order completion for line sharing orders is particularly of concern because Covad's experience shows that BellSouth often fails to perform the necessary cross connections on time. Covad asserts that BellSouth's failure to provide accurate service order completion notices for line shared UNE orders thus jeopardizes Covad's ability to effectively compete for customers in the State of Alabama.⁵⁵⁶

(ii) The Georgia Third Party Test

With regard to the Georgia third party test and the regionality of BellSouth's OSS systems, Covad points out that the KPMG third party test in Georgia did not test electronic ordering for ADSL, HDSL, UCL, IDSL, or line shared loops, and did not test whether BellSouth's existing manual processes could handle high volumes of XDSL or line sharing orders. Covad maintains that KPMG in fact performed no volume testing on

⁵⁵⁴ Tr. p. 3723-3724 (*Davis*).

⁵⁵⁵ *Id.*

BellSouth's manual pre-ordering and ordering processes for XDSL or line sharing whatsoever.

Covad further notes that the KPMG third party test in Georgia did not evaluate BellSouth's electronic provisioning of loop makeup information. Further, Covad argues that the Georgia third party test monitored an insignificant number of XDSL loops being provisioned (27) and from that inadequate sample determined that BellSouth was provisioning loops in a nondiscriminatory manner. Covad thus maintains that any reliance on the Georgia third party test to determine compliance with Checklist Item 2, particularly with respect to OSS for XDSL loops and line sharing, is misplaced.⁵⁵⁷

(h) BellSouth's Rebuttal

(i) OSS Issues

CLEC Training

BellSouth disputes Covad's arguments that it does not provide accurate documentation to implement LENS ordering. In particular, BellSouth contends that the record demonstrates that it provides training classes for LENS and provides CLECs with detailed instructions on xDSL ordering through the LENS User Guide and the BellSouth Business Rules. BellSouth further maintains that it offers a three day course for CLECs that is designed specifically to demonstrate the use of LENS in a live production environment. BellSouth also notes that all of its training offerings can be accessed on the BellSouth web site.⁵⁵⁸ BellSouth thus maintains that Covad's apparent failure to avail itself of BellSouth's training offerings does not impact BellSouth's §271 compliance.

Call Response Times

BellSouth argues that the CLEC allegations that BellSouth's answering times for CLEC are slower than the answering times for BellSouth's retail customers is unfounded. BellSouth, in fact, contends that the CLEC answering times for May through September 2001 were significantly better than the average answering times for BellSouth's retail customers.

Similarly, BellSouth disputes AT&T's criticisms regarding BellSouth's pre-ordering response times for customer service records via LENS. BellSouth points

⁵⁵⁶ Tr. p. 3715-3717 (*Davis*).

⁵⁵⁷ Tr. p. 3718-3719 (*Davis*).

out that it released an upgrade to the CSR format and retrieval response time on July 28, 2001 and has met the benchmarks established by the Georgia Public Service Commission.⁵⁵⁹ In particular, BellSouth notes that in August and September, it met the parity standard for all the submetrics under Average Response Interval-LENS and Average Response Interval-TAG.⁵⁶⁰ BellSouth thus maintains that it provides CLECs with nondiscriminatory OSS access.

Parsing

With regard to AT&T and WorldCom's allegations that BellSouth's pre-ordering OSS does not provide parsed CSR information in the same manner that BellSouth enjoys it in its retail operations, BellSouth contends that the FCC has held explicitly that BOCs are not required to perform parsing on their side of the interface. Indeed, BellSouth notes that the FCC specifically rejected this same argument in approving SWBT's §271 application for Texas. BellSouth notes that the FCC stated therein that "[c]ontrary to AT&T's interpretation of the *Bell Atlantic New York Order*...we have not previously stated that a BOC must perform parsing on its side of the interface, rather we consider whether integration has been shown to be possible (or has actually been achieved)."⁵⁶¹

BellSouth contends that consistent with its obligations, it provides CLECs with the ability to parse CSR information on the CLEC side of the interface using the integratable machine-to-machine TAG pre-ordering interface. BellSouth asserts the CLECs can use the CSR data to parse to the same line level using the same unique section identifiers and delimiters that BellSouth uses for itself.⁵⁶² Moreover, BellSouth notes that two CLECs in this proceeding, ITC DeltaCom and AT&T, indicate that they have integrated the ordering and pre-ordering interfaces.⁵⁶³ In addition, BellSouth maintains that all of the KPMG test criteria in the Integration Test Evaluation Criteria and Results section of the Georgia third party test were satisfied.⁵⁶⁴

⁵⁵⁸ BellSouth Post Hearing Brief p. 60 [*Citing* Tr. pp. 546-547, and p. 653 (*Pate*)].

⁵⁵⁹ *Id.* [*Citing BellSouth FCC Brief* at 66-67].

⁵⁶⁰ *Id.* at pp. 60-61.

⁵⁶¹ *Id.* at p. 61 [*Citing SWBT Texas Order*, note 413, the FCC has not required a parsed CSR in any subsequent application].

⁵⁶² *Id.* [*Citing* Tr. p. 592 (*Pate*)].

⁵⁶³ *Id.* [*Citing* Tr. p. 2998 (*Bradbury*) and 3636-3637 (*Conquest*)].

⁵⁶⁴ *Id.* at p. 61.

BellSouth further notes that even though it is not required by the FCC to do so, BellSouth will provide CLECs with parsed CSRs. BellSouth represents that this parsing ability was tested in December 2001 and made available to CLECs in January 2002.⁵⁶⁵

LENS Availability

In response to CLEC allegations concerning LENS outages, BellSouth contends that when considering only full outages, LENS was available over 99.5% of the time between May and July of 2001. BellSouth further points out that it met the benchmark for OSS availability from May through September 2001. Under the totality of the circumstances test, BellSouth contends that it has satisfied its §271 obligations by providing nondiscriminatory access to its pre-ordering interface.⁵⁶⁶

Access to Due Dates

BellSouth contends that it has now remedied the FCC's findings in its *Louisiana II Order* that BellSouth did not provide parity and access to due dates because of delays in returning FOCs to CLECs. BellSouth contends that it has remedied the FCC's concerns and provides CLECs with FOCs in a timely and nondiscriminatory manner. For example, in the months of July, August, and September 2001, BellSouth notes that it met the established benchmark for 18 of the 22 mechanized FOC UNE submetrics for which there were data. BellSouth further contends that it has introduced an automatic due date calculation functionality in LENS and TAG. Based on these changes, BellSouth concludes that it has established that due date intervals for CLEC end users are computed using the same guidelines as for BellSouth retail customers, except for UNEs which BellSouth does not use in its retail operations.⁵⁶⁷

Regarding AT&T's contentions that BellSouth does not calculate due date for certain products and services, BellSouth points out that the UNE products and retail services that fall out for manual handling do not have a due date calculated automatically. Instead, the LCSC provides the due date on the FOC that is returned to the CLEC. BellSouth asserts that it provides information whereby the CLEC can use the targeted intervals to provide a due date for its customers. BellSouth maintains that

⁵⁶⁵ *Id.* at p. 62.

⁵⁶⁶ *Id.* at p. 62.

⁵⁶⁷ *Id.* at p. 62 [*Citing* Tr. p. 681-685 (*Pate*)].

this same process occurs on the retail side as well as the wholesale side of BellSouth's business.⁵⁶⁸

With regard to AT&T's reference to the KPMG exceptions in Georgia addressing deficiencies in BellSouth's due date calculator, BellSouth concedes that KPMG did identify a problem in calculating due dates through TAG. BellSouth maintains, however, that it quickly remedied this problem with an interim workaround. BellSouth also contends that it processed change requests CRO237 and CRO313 to address this issue and has thereby demonstrated that it provides sufficient due date calculation capability for CLECs.⁵⁶⁹

BellSouth further notes that other due date delays can occur if CLEC representatives are not adequately trained. BellSouth points out that the FCC has continually held that BOCs are not accountable for errors caused by competing carriers' mistakes and, therefore, such errors should not be part of the Alabama Commission's evaluation of BellSouth's §271 application.⁵⁷⁰

Loop Makeup Information

Despite CLEC contentions to the contrary, BellSouth represents that it provides CLECs with nondiscriminatory access to the loop information contained in the Loop Facilities Assignment and Control System (LFACS) that is available to BellSouth retail units. BellSouth asserts that it provides such access through TAG, Robo TAG™, and LENS. BellSouth contends that using the LFACS database, CLECs can access all essential loop makeup information and have had the capability of doing so on a region-wide basis since May of 2001. In addition, CLECs can create and cancel reservations for new or spare facilities using the functionality in TAG, Robo TAG™, or LENS.⁵⁷¹

BellSouth points out that the FCC has recognized that some loop makeup information will be processed manually and has found this practice to be consistent with the statutory requirements. BellSouth maintains that its manual service inquiry processes for loop makeup information are accomplished in substantially the same time and intervals for both the CLECs and BellSouth's retail customers. Indeed, BellSouth

⁵⁶⁸ *Id.* at p.63 [Citing Tr. p. 682-683 (Pate)].

⁵⁶⁹ *Id.* [Citing KPMG Closure Report for Exception 116 (May 8, 2001)].

⁵⁷⁰ *Id.* [Citing Tr. p. 537 (Pate); and SWBT Kansas/Oklahoma Order at ¶146 and Verizon MA Order at ¶75.

⁵⁷¹ *Id.* at pp. 63-64 [Citing Tr. p. 596-598; and 693 (Pate)].

contends that the FCC approved a substantially similar manual process in the *Bell Atlantic New York §271 Order*.⁵⁷²

BellSouth concludes that it has satisfied its obligation with regard to the provisions of loop makeup information through its actual commercial data. Specifically, BellSouth contends that CLECs submitted 13,337 mechanized LMU service inquiries from December 2000 through March 2001.⁵⁷³ BellSouth contends that it met the benchmark for electronic loop makeup 100% of the time from the period of May to September of 2001. BellSouth concedes that there was no volume in Alabama for manual loop makeup information, but contends that it achieved the benchmark for manual loop makeup in Georgia in June, July, and August, although there was no volume in Georgia in September.⁵⁷⁴

Migration by Telephone Number

BellSouth contends that it has now implemented functionality which allows CLECs to process orders based on a customer's telephone number. BellSouth, therefore, urges the Commission to conclude that WorldCom's concerns regarding the unavailability of this functionality are now moot.⁵⁷⁵

Order Flow Through

BellSouth alleges that AT&T's claim that a high rate of CLEC orders fall out for manual processing while BellSouth can submit electronic LSRs that flow through up to 100% of the time is unfounded. BellSouth first points out that it does not issue LSRs because the LSR was created to allow CLECs to issue orders in one format throughout the country. As a result, the LSR must be translated before it can be accepted by BellSouth's legacy systems.

BellSouth alleges that the process it employs for submitting orders is substantially similar to the process utilized by the CLECs and thus the CLECs are afforded a meaningful opportunity to compete. BellSouth concludes that its processes are competitively neutral and in compliance with the applicable statutes.⁵⁷⁶

⁵⁷² BellSouth Post Hearing Brief p. 64 [*Citing Bell Atlantic New York Order*, at 4021-4024 *SWBT Kansas/Oklahoma Order* at ¶122.

⁵⁷³ *Id.* [*Citing* Tr. p. 598 (*Pate*)].

⁵⁷⁴ *Id.* at p. 65.

⁵⁷⁵ *Id.* [*Citing Notice of Ex Parte Presentation* CC Docket No. 01-277, November 7, 2001, *Georgia/Louisiana Application*].

⁵⁷⁶ *Id.* at pp. 68-69 [*Citing* Tr. p. 706 and 716-718 (*Pate*)].

BellSouth further contends that the data submitted by AT&T regarding BellSouth's flow through percentages are inconsistent with the FCC's definition of flow through and should be rejected. BellSouth maintains that AT&T's achieved flow through measurement includes orders that fall out by design when the FCC has recently affirmed that achieved flow through excludes orders that fall out by design and "measures the percentage of orders designed to flow through that do, in fact, flow through."⁵⁷⁷ Because AT&T's numbers rely upon a faulty definition of low flow through, BellSouth urges this Commission to disregard AT&T's proffered numbers and instead rely upon BellSouth's flow through numbers which are calculated based on the definition of flow through that has been accepted by the FCC.⁵⁷⁸

BellSouth further contends that it has introduced new versions of its interfaces even though some CLECs choose not to implement them. As a result, BellSouth maintains that the flow through enhancements that occurred with these new releases will not be reflected in those CLEC's flow through percentages. BellSouth contends that this provides an explanation as to why some CLECs have a higher flow through percentage than others.

BellSouth further contends that AT&T fails to recognize or account for the fact that CLECs often make errors that diminish flow through rates. BellSouth stresses that the FCC has stated "that on average for all carriers combined, Verizon rejected approximately 43 to 49% of resale orders and 21 to 25% of UNE orders. The Commission does not, however, hold a BOC accountable for rejects that occur for reasons within a competing carrier's control."⁵⁷⁹ With such a wide variety of flow through rates and recognizing that BOCs are not accountable for CLEC errors, the FCC evaluated whether Bell Atlantic's systems were capable of providing high levels of order flow through rather than actual flow through percentages. In so doing, the FCC found that Bell Atlantic's systems met the statutory requirements, notwithstanding the seemingly high fall out rates. BellSouth contends that based on the FCC's espoused

⁵⁷⁷ *Id.* at p. 69 [Citing *Verizon Pennsylvania Order* at fn. 183].

⁵⁷⁸ *Id.* [Citing Tr. p. 611 (*Pate*)].

⁵⁷⁹ *Id.* [Citing *Verizon Massachusetts Order*, ¶75; *Bell Atlantic New York Order*, 4038-4040 (noting that flow through rates for UNE-P Orders range from 1 to 83 percent); and *Verizon PA Order*, ¶49, (approving Verizon's application even though flow through rates ranged from 54 to 66.5 percent from February through June 2001)].

standard, its system is ready and able to process orders in a nondiscriminatory manner.⁵⁸⁰

Ordering Functionality

BellSouth disputes AT&T's argument that it fails to provide reliable data on its ordering and provisioning notice intervals by excluding "non-business" hours in calculating its mechanized FOC and Rejection Notice intervals. BellSouth notes that the Georgia Commission, which established the benchmarks question, and the Louisiana Commission, approved BellSouth's §271 application with these intervals. BellSouth urges the Commission to similarly find that BellSouth's intervals accurately capture BellSouth's OSS performance.⁵⁸¹

Cancellation Period

With regard to WorldCom's argument that BellSouth's previous 10 day holding period for CLEC order clarification was insufficient, BellSouth contends that its FCC Georgia/Louisiana application makes clear that BellSouth has extended this period to 30 days. BellSouth thus asserts that WorldCom's concerns are resolved.⁵⁸²

Ordering and Provisioning Functionality for UNE Combinations

Despite CLEC contentions to the contrary, BellSouth argues that it provides a virtually seamless UNE-P conversion process. BellSouth argues that the CLEC claims that a single "C" order process is necessary for §271 compliance has already been rejected by the FCC during its review of the Kansas/Oklahoma application by SWBT. In Kansas, SWBT did not have the single "C" order process, but instead had the same three-order process utilized by BellSouth. BellSouth notes that the FCC nonetheless approved SWBT's application in Kansas and in so doing concluded that "SWBT has deployed an interim solution, is working through the change management process to resolve the issue permanently, and since the problem affected so few end users, we thus find it does not warrant a finding of checklist noncompliance."⁵⁸³

BellSouth concludes that even though a single "C" process is not required for §271 approval, it will provide the single "C" order process in early 2002. In addition, BellSouth notes that it completed refresher training courses for all LCSC

⁵⁸⁰ *Id.* at p. 70.

⁵⁸¹ *Id.*

⁵⁸² *Id.* at p. 71.

⁵⁸³ *Id.* at p. 72 [*Citing SWBT Kansas/Oklahoma Order*, ¶153].

representatives to ensure that end users do not lose dial tone service or experience other errors during UNE-P conversion.⁵⁸⁴

Maintenance and Repair

BellSouth disputes Covad's assertion that its Monthly State Summary for Alabama demonstrates that CLECs experience a trouble rate higher than BellSouth's retail trouble report rate. Contrary to Covad's contentions, BellSouth maintains that the record demonstrates that BellSouth and CLEC end users experience troubles at roughly the same rate. BellSouth further points out that for the months of May through September 2001, CLEC results have exceeded the BellSouth retail analog for Maintenance Average Duration for every submetric with CLEC activity.⁵⁸⁵

BellSouth further disputes KMC's assertion that BellSouth repairs come with a severe recurrence problem. BellSouth notes that for May through September 2001, there were fewer repeat troubles on CLEC end user lines than on BellSouth lines.⁵⁸⁶

BellSouth also disputes AT&T's assertion that the TAFI interface must be integrated into AT&T's back off system in order for BellSouth to provide parity access to its maintenance and repair systems. BellSouth points out that the FCC has stated that it does not require BOC's to provide an integratable, machine to machine maintenance and repair interface.⁵⁸⁷ BellSouth further points out that in the *SWBT Texas Order*, the FCC reaffirmed its position, stating that "a BOC is not required, for the purpose of satisfying checklist item 2, to implement an application – to – application interface for maintenance and repair functions."⁵⁸⁸

BellSouth further points to a 1999 letter from Mr. Lawrence Strickling, the then chief of the FCC's Common Carrier Bureau, which BellSouth maintains clarifies that the FCC did not conclude in its *Louisiana II Order* that "TAFI's lack of integration constitutes nondiscriminatory access." BellSouth maintains that the letter instead confirms BellSouth's view that its maintenance and repair access meet the FCC's requirements.⁵⁸⁹

Billing

⁵⁸⁴ *Id.* [Citing Tr. p. 1197-1200 (*Ainsworth*)].

⁵⁸⁵ *Id.* at p. 74 [Citing BellSouth Exhibit 276, M&R-3, pp. 4-5, 4-6].

⁵⁸⁶ *Id.* at p. 75 [Citing BellSouth Exhibit 276, M&R-3, pp. 4-5, 4-6].

⁵⁸⁷ *Id.* [Citing *Bell Atlantic New York Order*, 4069].

⁵⁸⁸ *Id.* [Citing *SWBT Texas Order*, n. 565].

⁵⁸⁹ *Id.* [Citing Tr. p. 735 (*Pate*) and BellSouth Exhibit 195].

BellSouth alleges that it has addressed AT&T's assertions that BellSouth has difficulty collecting usage data to be sent to CLECs on the daily usage files. BellSouth concedes that some usage data were left unidentified in situations where service orders were briefly delayed for error correction purposes. BellSouth contends, however, that the problem was limited in scope and notes that it has implemented a systems change to begin looking at pending service orders to anticipate when end users will be changing from BellSouth to a CLEC.

BellSouth further asserts that it has revised the billing system to access service order data earlier thereby providing BellSouth with access to as much information as possible for determining where the usage data belongs. BellSouth, therefore, maintains that the issues raised by AT&T are not systematic in nature, but are limited in scope and have been addressed fully by BellSouth.⁵⁹⁰

(ii) The Change Control Process

Alleged "Veto" Power

BellSouth acknowledges that the FCC requires that competing carriers have "substantial input" in the design and operation of a BOC's change management process which is often referred to as the Change Control Process ("CCP"). BellSouth further notes that the FCC has made clear that the substantial input standard requires BOCs to "accommodate a variety of interests with any given change release," but that, invariably, some competing carriers will be "less than satisfied with any given change."⁵⁹¹

BellSouth contends that AT&T's argument that BellSouth has utilized its alleged veto power over the written CCP document to thwart CLEC participation in the CCP, and has used the process to favor BellSouth initiated changes is without merit. As of February 28, 2001, BellSouth maintains that it had implemented (or was in the process of implementing) 81 CLEC initiated change requests, but had implemented (or begun implementing) only 45 BellSouth initiated change requests. BellSouth thus concludes that a concerted effort has been made to incorporate all reasonable requests for change in the CCP.⁵⁹²

BellSouth further maintains that it demonstrated through the testimony of Mr. Pate that it has provided CLECs with substantial input in the design and continued

⁵⁹⁰ *Id.* at pp. 76-77 [Citing Tr. p. 4342 (Scollard)].

⁵⁹¹ *Id.* at p. 78 [Citing *Bell Atlantic New York Order*, 4011-4012].

operation of the change management process. BellSouth notes that it first sought CLEC input into the CCP in October 1997 and has held numerous meetings with CLECs since that time. Further, the committee that developed, approved, and signed the original BellSouth Electronic Interface Change Control Process (“EICCP”) was comprised of CLEC representatives including AT&T, WorldCom, Sprint, e.spire, LCI, and Intermedia.⁵⁹³

BellSouth represents that the current CCP document specifies the procedures BellSouth must follow when reviewing change requests. BellSouth contends that where it has declined to adopt a CLEC change request, it has provided reasons for its decision through the CCP and, where appropriate, has given a detailed explanation from a BellSouth subject matter expert.⁵⁹⁴ Finally, should a dispute arise, the CCP contains two escalation options for CLECs. First, CLECs can use the escalation process within BellSouth which allows CLECs to escalate the dispute all the way up to senior management for reconsideration. In addition, CLECs can raise the dispute before any state regulatory authority such as the Commission. BellSouth points out that thus far, no CLEC has brought such a dispute to the Commission.⁵⁹⁵

BellSouth’s Compliance with the Requirements of the CCP

BellSouth disputes AT&T’s claim that BellSouth makes changes to the CCP without adhering to established procedures and maintains that it complies with the CCP requirements. BellSouth notes that while the CCP allows a BellSouth change control manager to make and publish cosmetic changes to the CCP document, all other change requests must be submitted through change request forms and discussed during monthly change review status meetings. BellSouth maintains that AT&T presents no specific evidence that BellSouth has modified the CCP document inappropriately.⁵⁹⁶

Alleged Failure to Meet Stated CLEC Needs

BellSouth disputes AT&T’s allegations that BellSouth has failed to meet a number of CLEC needs by, among other things, (1) not establishing a “go/no go decision point”; (2) not providing parsed CSRs; (3) not implementing change requests; (4) not giving CLECs an opportunity to meet with BellSouth decision makers; (5) not

⁵⁹² *Id.* at p. 78 [*Citing* Tr. p. 582-583 (*Pate*)].

⁵⁹³ *Id.* [*Citing* Tr. p. 552 (*Pate*)].

⁵⁹⁴ *Id.* at pp. 78-79 [*Citing* Tr. p. 658 (*Pate*)].

⁵⁹⁵ *Id.* [*Citing* Tr. p. 569-570 (*Pate*)].

maintaining a stable test environment; and (6) not providing CLECs with an adequate opportunity to test changes prior to implementation. BellSouth maintains that none of the aforementioned allegations are substantial and thus do not undermine the overall sufficiency of BellSouth's change management process.

Regarding the go/no go decision point, AT&T and WorldCom maintain that such a provision would ensure that CLECs are not forced to prematurely cut over to a new release. BellSouth concedes that its CCP document does not contain a specific go/no go provision, but contends that its CCP document is nonetheless adequate because it does include a versioning policy which provides a notification schedule to keep CLECs up to date on the implementation of new interfaces and program release upgrades. BellSouth maintains that because it uses two versions of interface programs at all times (i.e., the "current" version in the "new" version), CLECs are not required to switch to the new version of an interface or program unless they are ready to make the transition. In addition, there are proposed changes to the notification schedule that, if approved within the CCP, will increase the advance notification prior to different steps in the deployment of new interfaces and program releases. BellSouth thus contends that AT&T's criticism regarding the lack of a "go/no go" provision is unwarranted because BellSouth's CCP notification schedule already achieves what such a provision would.⁵⁹⁷

Testing Environment

BellSouth concedes that BOCs must provide CLECs with a "testing environment that mirrors the production environment in order for competing carriers to test the new release." BellSouth further concedes that the FCC requires that BOCs provide a CLEC "with access to a stable testing environment to certify that [its] OSS will be capable of interacting smoothly and effectively with [the ILECs] OSS." BellSouth maintains that its current test environment and its new optional CLEC Application Verification Environment (CAVE) satisfy the FCC's requirements in this regard.⁵⁹⁸

BellSouth in fact states that it provides CLECs with two types of open and stable testing environments that satisfy the FCC's requirements. The first of these testing environments is used when the CLEC shifts from a manual to an electronic environment, or when the CLEC is upgrading its electronic interface from one industry

⁵⁹⁶ *Id.* at p. 79 [*Citing* Tr. p. 558 (*Pate*)].

⁵⁹⁷ *Id.* at p. 80 [*Citing* Tr. p. 662 (*Pate*)].

standard to the next. BellSouth asserts that this environment allows CLECs to perform various types of testing including: (1) application connectivity testing; (2) API testing; (3) application testing; (4) Syntax testing; (5) validity testing; and (6) service readiness testing. BellSouth points out that in the Georgia third party test, KPMG found that in connection with the release of OSS-99, BellSouth satisfactorily provided functional testing environments to CLECs for all supported interfaces thereby demonstrating that the testing environment is stable and capable of certifying whether a CLEC's OSS will interact smoothly and effectively with a BOC's OSS.⁵⁹⁹

BellSouth secondly points out that it provides the CAVE test environment which mirrors BellSouth's production environment. More specifically, BellSouth contends that CAVE emulates the production CLEC interfaces TAG, EDI, LEO, LESOG, and the LNP Gateway. BellSouth represents that CAVE also accesses BellSouth's legacy systems allowing CLECs to receive FOC's, reject notifications, simulated completion notifications, clarifications, jeopardy notifications, and functional acknowledgements during testing.

BellSouth concludes that its CAVE testing capability is adequate to meet the requirements of this checklist item, particularly since BellSouth informs CLECs of its determinations on a case by case basis.⁶⁰⁰ BellSouth maintains that it tested CAVE via carrier-to-carrier testing with a vendor that provided TAG interfaces to five CLECs in April 2001. BellSouth asserts that this testing was successfully completed on April 20, 2001. BellSouth also notes that two additional CLECs expressed interest in testing CAVE. BellSouth points out, however, that CLECs are not required to perform beta testing before using CAVE.⁶⁰¹

(iii) UNE Combinations

BellSouth strongly disputes the AT&T position that the FCC has not disturbed its established position that an ILEC must provide combinations of elements if it currently combines its elements anywhere in its network at cost, and that FCC Rule 315(b) requires BellSouth to offer network elements that it currently combines. BellSouth contends that FCC Rule 315(b) does not, in fact, require ILECs to combine currently

⁵⁹⁸ *Id.* [Citing *SWBT Texas Order*, 18419].

⁵⁹⁹ *Id.* at p. 81 [Citing *Supplemental Test Plan Final Report*, CM-2-1-6, p. VII-A-22].

⁶⁰⁰ *Id.* [Citing Tr. p. 577-578 (*Pate*)].

⁶⁰¹ *Id.* at pp. 81-82 [Citing Tr. p. 578 and 674-675 (*Pate*)].

uncombined elements for CLECs. BellSouth further notes that the FCC has expressly declined to “interpret Rule 51.315(b) as requiring incumbents to combine unbundled network elements that are ordinarily combined.”⁶⁰²

BellSouth further disputes AT&T’s assertion that BellSouth’s practice of charging CLECs for combining currently un-combined UNEs on their behalf is discriminatory. BellSouth maintains that its treatment of CLECs in this regard is, in fact, equivalent to its treatment of BellSouth retail customers. BellSouth contends that the record demonstrates that in the retail setting, if the network elements needed to serve a customer’s premise that are not already combined, BellSouth incurs costs in performing the physical work to combine them. BellSouth maintains that it recovers these costs through nonrecurring charges. Likewise, when BellSouth combines currently uncombined UNEs on behalf of a CLEC, it recovers the costs of doing so through what AT&T refers to as “glue charges.” BellSouth claims that its practice of assessing a charge for combining UNEs is thus not discriminatory against CLECs.⁶⁰³

BellSouth further notes that the fact that some state commissions in the BellSouth region have directed BellSouth to combine UNEs for CLECs at TELRIC based rates is irrelevant to a determination by this Commission pursuant to §271. BellSouth contends that the state commissions that have required it to combine UNEs for CLECs at TELRIC based rates have chosen to go beyond the requirements of §271 in so doing.⁶⁰⁴ BellSouth represents that all it is required to demonstrate for §271 purposes is that it has a legal obligation to provide access to UNE combinations in accordance with the FCC’s requirements.

BellSouth contends that the policy arguments offered by the CLECs in support of their position that this Commission should impose requirements above and beyond the conditions required by Checklist Item 2 are unpersuasive. BellSouth argues that to require more than the FCC already requires will reduce BellSouth’s incentive to invest in new capabilities because BellSouth would be unable to recover its actual costs. In addition, BellSouth argues that requiring it to effectively subsidize competition by CLECs would be inefficient and would create a disincentive to facilities based competition. BellSouth asserts that CLECs can and do compete vigorously in the local

⁶⁰² *Id.* at p. 83 [*Citing* Tr. p. 123, (*Ruscilli*); and *UNE Remand Order*, 3909].

⁶⁰³ *Id.* at p. 83-84.

market without having BellSouth combine UNEs at TELRIC based rates. CLECs may combine UNEs for themselves or pay BellSouth market rates for so doing. Accordingly, BellSouth contends that there is no justification for compelling BellSouth to combine currently uncombined UNEs at TELRIC based rates, particularly since imposing such a requirement would be contrary to the Act's fundamental goals.⁶⁰⁵

(iv) UNE Pricing

BellSouth disputes the argument of SECCA that local competition is being impeded by BellSouth's UNE rates because those rates are allegedly not cost based. BellSouth maintains that SECCA's argument ignores the fact the FCC rules define the ILEC's complete obligation relating to network elements. Moreover, BellSouth contends that the FCC has consistently held that a profitability argument is not part of the §271 evaluation of whether an applicant's rates are TELRIC based.⁶⁰⁶

BellSouth further disputes WoldCom's claims that BellSouth's current and proposed UNE rates are not cost based and are not TELRIC compliant because BellSouth has adopted a scorched node methodology due to a legal defect with its former statistical sample methodology. BellSouth similarly disputes WorldCom's assertions that BellSouth's rates are based on antiquated technology in violation of TELRIC principals. BellSouth maintains that the current cost docket is the appropriate forum for WorldCom to raise its UNE rate concerns. In that docket, BellSouth maintains that the Commission engaged in the process of examining BellSouth's UNE rates carefully and updating its existing rates as appropriate.

BellSouth further maintains that the FCC has held that an application may be approved even if the permanent rates for all elements have not yet been established. BellSouth accordingly argues that addressing cost issues in this proceeding would be duplicative of the Commission's time and resources.⁶⁰⁷

BellSouth similarly contests SECCA's claim that BellSouth's daily usage file rate is excessive and not TELRIC compliant since it is higher than the rates charged by other carriers for the same element. BellSouth contends that it is not in violation of the FCC's pricing rules because rate differences between BOCs are reflective of differences

⁶⁰⁴ *Id.* at p. 84.

⁶⁰⁵ *Id.* at p. 84 [*Citing* Tr. p. 202-205 (*Ruscilli*)].

⁶⁰⁶ *Id.* at pp. 85-86 [*Citing* Tr. p. 202 (*Ruscilli*)].

⁶⁰⁷ *Id.* at p. 86 [*Citing* Tr. p. 179 (*Ruscilli*); and *Bell Atlantic New York Order*, 4090-4091].

in costs. BellSouth further notes that the appropriate forum for SECCA to raise its cost and pricing concerns was in the revised cost docket.

(II). The Determination of the Commission

(i) Nondiscriminatory Access to OSS

Overview

We note at the outset that BellSouth has made substantial strides in its efforts to provide nondiscriminatory access to its OSS. Despite the obvious and steady improvements demonstrated by BellSouth over the course of the various proceedings conducted in this cause, however, the CLEC intervenors have continued to raise numerous issues concerning the OSS access BellSouth provides. The numerous issues raised in the proceedings conducted in this cause during 2001 are set forth in the preceding sections of this Order and need not be restated in their entirety here. We do, however, address the major areas of concern raised by the CLEC intervenors in the discussions and conclusions set forth immediately below as well as BellSouth's performance.

Preordering - Interface Availability and Documentation

BellSouth contends that it provides competitive carriers in Alabama with nondiscriminatory access to all of the preordering OSS utilized by BellSouth's retail operations via either the TAG, Robo TAG™, or LENS interfaces. BellSouth further contends that it provides competitive carriers with extensive training and all documentation necessary to effectively utilize the interfaces and systems it makes available.⁶⁰⁸ To further ensure nondiscriminatory access, BellSouth now offers a help desk to CLECs to assist with technical difficulties that are experienced with its electronic interfaces.⁶⁰⁹ Perhaps the strongest evidence of the success of BellSouth's training and technical assistance efforts comes from the average 4.6 rating on a 5.0 scale which CLEC representatives participating in BellSouth's various training classes have given such classes.⁶¹⁰

Based on the foregoing, we find unpersuasive Covad's argument that BellSouth fails to provide adequate documentation in support of LENS. We also find unpersuasive the arguments of Covad and ITC DeltaCom concerning LENS outages. Neither Covad

⁶⁰⁸ Tr. pp. 538-539, 545-551 (*Pate*).

⁶⁰⁹ *Id.*

nor ITC DeltaCom demonstrated with certainty any competitive harm that resulted from the OSS outages which they allege were problematic. Our finding in this regard is only bolstered by the fact that BellSouth demonstrated that LENS was available over 99.5% of the time between May and July of 2001, and that it met the benchmark for OSS availability from May through September 2001. Of further consequence is the fact that in August and September 2001, BellSouth met the parity standard for all the submetrics under Average Response Interval – LENS and Average Response Interval - TAG.

Preordering - Integration of the Preordering and Ordering Functions

Another area of concern particularly scrutinized by this Commission and the FCC has been the issue of whether BellSouth provides competing carriers with the ability to integrate the preordering and ordering functions. According to the standards established by the FCC, BOCs which parse customer record information into identifiable fields for competing carriers may meet their burden with respect to the integration of the preordering and ordering functions by demonstrating that competitive LECs have the ability to so integrate.⁶¹¹ BOCs that do not provide parsed preordering information can meet their obligations with respect to the integration of the preordering and ordering functions by demonstrating that competing carriers have been able to successfully integrate.⁶¹²

We note that at the time of the latest proceedings conducted in this cause, BellSouth did not provide parsing on its side of the interfaces offered to CLECs, but instead provided CLECs with the ability to parse CSR information on their side of the interfaces offered using the integratable machine-to-machine TAG preordering interface. BellSouth has long maintained that CLECs could use the CSR data provided to parse to the same line level using the same unique section identifiers and delimiters that BellSouth uses for itself.⁶¹³ In support of its arguments to that effect, BellSouth notes that two CLECs in this proceeding, AT&T and ITC DeltaCom indicate that they have integrated the ordering and preordering interfaces.⁶¹⁴ In addition, BellSouth maintains that all of the KPMG, Integration Test Evaluation Criteria and Result Section of the Georgia third party test were satisfied.

⁶¹⁰ Tr. pp. 545-551 (*Pate*).

⁶¹¹ *Bell Atlantic New York Order*, 15 FCC Rcd. at 4019, ¶137.

⁶¹² *SWBT Texas Order*, 15 FCC Rcd. at 18428-29, ¶152.

⁶¹³ Tr. p. 592 (*Pate*).

We find that BellSouth's demonstration that AT&T and ITC DeltaCom have been able to integrate their preordering and ordering functions is sufficient to meet the preordering/ordering integration burden of proof established by the FCC. We further note that in January of 2002, well after the proceedings in this cause were concluded, BellSouth began to offer parsed CSRs to competing carriers.⁶¹⁵ As observed by the FCC in its *Georgia/Louisiana Order*, BellSouth's recent provision of parsed CSRs "provides competing carriers with the tools necessary to integrate their ordering and preordering functions, both with and without a parsed CSR."⁶¹⁶ Given the record compiled in this cause and the FCC's rejection of the CLEC arguments disputing BellSouth's claims that it has met its preordering/ordering integration obligations in the *Georgia/Louisiana Order*, there appears to be no room for arguing the fact that BellSouth has met its preordering/ordering integration burden in this jurisdiction as well.

Preordering - Due Date Calculation

BellSouth's ability to provide reliable nondiscriminatory access to due dates has been another area that the CLECs have emphasized throughout the 271 process. In this proceeding, AT&T and Covad continue to maintain that BellSouth does not provide adequate due date calculation functionality. In particular, AT&T and Covad contend that BellSouth continues to provide wrong due dates in some instances and does not calculate due dates at all for certain products and/or services. AT&T and Covad maintain that BellSouth's due date deficiencies undermine the credibility of CLECs with their customers.⁶¹⁷

The Commission recognized early on in the 271 process that the provision of due dates was critical to the development of local competition. The Commission fully understands that the CLECs incur the wrath of their customers with regard to inaccurate due dates they provide to those customers due to information they receive from BellSouth. Given that understanding and the FCC's finding in its *Second Louisiana Order* that BellSouth's ability to automatically calculate due dates would be closely scrutinized in future applications, we have carefully assessed BellSouth's ability to

⁶¹⁴ Tr. p. 2998 (*Bradbury*) and p. 3636-3637 (*Conquest*).

⁶¹⁵ *Georgia/Louisiana Order* ¶126.

⁶¹⁶ *Id.* at ¶130.

⁶¹⁷ Tr. pp. 2913 and 3017-3018 (*Bradbury*).

provision accurate, reliable due dates in the latest proceedings conducted in this cause.⁶¹⁸

Our review of the record reveals that BellSouth has indeed introduced an automatic due date calculation functionality in LENS and TAG and provides CLECs with FOCs in a timely, nondiscriminatory manner. While it is true that BellSouth does not automatically calculate due dates for UNE products and retail services that fall out for manual handling, BellSouth's LCSC personnel do provide due dates on FOCs that are returned to CLECs on such orders.

BellSouth concedes that an estimated due date is not provided in the preordering mode in certain situations such as where CLECs request 25 lines or more on a single LSR or where CLECs expedite an LSR. It is important to note, however, that BellSouth's retail representatives encounter the same circumstances with respect to such orders. Moreover, BellSouth provides information whereby CLECs can use target intervals to provide due dates to their customers just as BellSouth's retail service representatives do in such situations.⁶¹⁹

BellSouth further concedes that KPMG identified a problem with calculating due dates through TAG in its Georgia test. BellSouth asserts that it implemented the change request necessary to address that issue, a contention which AT&T and Covad did not dispel through the testimony they presented.⁶²⁰

We thus conclude that BellSouth now provides reliable, nondiscriminatory access to due dates. Our conclusion in this regard is strengthened by the fact that the FCC, in its *Georgia/Louisiana Order*, concluded that BellSouth has remedied previous errors in its due date calculation functionality and provides reliable due dates to competitors in a manner that is equivalent to what BellSouth provides its retail operation.⁶²¹

In conclusion, we find that BellSouth has satisfactorily rebutted the CLEC intervenor allegations that it fails to provide nondiscriminatory access to its OSS preordering functionality. We find that competing carriers have access to the same preordering OSS utilized by BellSouth's retail operations using either TAG or LENS.

Ordering

⁶¹⁸ *Second Louisiana Order*, 13 FCC Rcd. at 20670, ¶106.

⁶¹⁹ Tr. pp. 682-683 (*Pate*).

⁶²⁰ KPMG-Closure Report for Exception 116 (May 8, 2001).

⁶²¹ *Georgia/Louisiana Order* at ¶132.

With respect to the ordering processes BellSouth has in place, the CLEC intervenors contend that BellSouth relies too heavily on the manual processing of orders. As pointed out by AT&T and Covad, manual handling delays timely order status notices for CLEC LSRs, subjects CLEC LSRs to later due dates, and increases the risk of input errors with respect to CLEC LSRs. In short, the CLECs contend that excessive manual handling of orders increases operational costs for both CLECs and BellSouth and ultimately results in poor service to end users.⁶²²

WorldCom asserts that BellSouth's excessive manual handling of CLEC orders results in BellSouth providing substantially better flow through to itself than it does for CLECs. WorldCom asserts that CLEC flow through would be greatly enhanced by the introduction of telephone number migration as well as the provision of CSRs in a fully parsed format.⁶²³

KMC asserts that BellSouth fails to provide adequate notice of "pending facility" conditions despite the knowledge that KMC and other CLECs rely upon the FOC in scheduling appointments with their customer. In particular, KMC alleges that BellSouth fails to verify that adequate facilities exist prior to confirming loop orders. According to KMC, BellSouth sends FOCs that establish install dates without checking reliable records to determine whether it has facilities to actually meet the due date noted. KMC alleges that BellSouth's own technicians frequently find a record discrepancy or defective facility when they arrive to install a service thus causing install dates to be missed unnecessarily. KMC thus contends that BellSouth fails to provide adequate Jeopardy Notices due to pending facility conditions despite the knowledge that KMC and other CLECs rely upon the FOC in scheduling appointments with their own customers.⁶²⁴

BellSouth maintains that in addition to TAG, Robo TAG™, and LENS, it provides CLECs with access to the same ordering and processing OSS used by BellSouth through the EDI interface. With regard to the issue order flow through and manual handling, BellSouth points out that the FCC does not require BOCs to provide a means for the electronic ordering of all products and services in order to demonstrate nondiscriminatory access to its OSS. BellSouth asserts that some categories of orders

⁶²² Tr. pp. 2918-2923 (*Bradbury*).

⁶²³ See BellSouth Exhibits 347-349 and 352.

are designed to be manual in nature whether the customer in question belongs to a CLEC or BellSouth. BellSouth surmises that it has provided flow through of CLEC requests in substantially the same time and manner as it provides flow through for BellSouth retail orders and thus satisfies the FCC's requirements.⁶²⁵

BellSouth further asserts that its ordering processes are nondiscriminatory as reflected in its performance data. In particular, BellSouth notes that for resale residence orders, its flow through performance improved from 87.52% in June, 2001 to 90.39% in September, 2001. For resale business orders, flow through improved from 57.11% in June, 2001 to 68.47% in September, 2001. For UNEs, BellSouth maintains that its flow through increased from 70.70% in June, 2001 to 79.33% in September, 2001.⁶²⁶

BellSouth further contends that its actual commercial usage demonstrates that it is providing Firm Order Confirmations and Rejects in a timely manner, particularly in the Partially Mechanized and Manual categories. For the months of May through September 2001, BellSouth points out that it met approximately 91.24% of the benchmarks for Partially Mechanized and Manual FOCs and Rejects for resale and UNE orders. BellSouth further contends that when orders do fall out from manual processing, BellSouth has adequate procedures in place for that manual processing. BellSouth further asserts that it provides CLECs with timely access, including access to Order Rejection Notices, Average Installation Intervals, FOC Notices, Order Completion Notices, and Jeopardy Notices.

In further addressing the CLEC allegations that its flow through rates are inadequate, BellSouth points out that the CLEC intervenors, and in particular AT&T, include orders in their achieved flow through measurement that were designed to fall out for manual handling. BellSouth contends that the FCC has recently affirmed that achieved flow through excludes orders that fall out by design.⁶²⁷

BellSouth further contends that it has introduced new versions of its interfaces which allow for electronic ordering, but some CLECs have chosen not to implement them. BellSouth maintains that this at least partially explains why some CLECs have higher flow through percentages than others. BellSouth points out that it is because of

⁶²⁴ Tr. p. 3679 (*Weber*).

⁶²⁵ Tr. pp. 710-711 (*Pate*).

⁶²⁶ BellSouth Exhibit 352.

⁶²⁷ Tr. p. 611 (*Pate*).

such instances that the FCC evaluates whether a BOC's systems are *capable* of providing high levels of order flow through rather than focusing *per se* on actual flow through percentages.⁶²⁸

With respect to KMC's argument that BellSouth sends FOCs which established install dates without checking reliable records to determine whether it has available facilities which will actually allow the established due date to be met, we note that the FCC rejected a similar argument raised by KMC in the *Georgia/Louisiana Order*.⁶²⁹ Specifically, the FCC concluded that BellSouth does not generally check the availability of facilities before committing to a due date for the establishment of service to its retail customers and, therefore, does not discriminate against competitive LECs when it follows the same practice with regard to its issuance of FOCs to such carriers. Although we do not particularly endorse BellSouth's practice in this regard, we do not find BellSouth's practices to be discriminatory.⁶³⁰

With respect to the emphasis placed by the CLEC intervenors on BellSouth's allegedly excessive reliance on the manual processing of CLEC orders, we note that the determining criteria is whether the orders in question must be handled manually for both BellSouth and CLECs. We conclude from our review of the record that BellSouth has demonstrated that the types of orders which must be entered manually into its systems must be so processed regardless of whether the customer in question belongs to a CLEC or BellSouth. We, therefore, conclude that BellSouth's reliance on manual handling is not discriminatory in nature. We further find that the CLEC intervenors have not demonstrated that an unnecessarily high level of CLEC orders fall out from manual processing due to BellSouth error.

With regard to the CLEC Intervenor's claim that BellSouth's flow through results are indicative of discriminatory behavior, we note that the FCC has established that flow through performance data are not the sole indicator of nondiscrimination. Rather, the FCC has looked to factors such as a BOC's overall ability to accurately process manually handled orders, scale its systems, and return timely Order Confirmation and Reject Notices as relevant and probative evidence in analyzing a BOC's ability to

⁶²⁸ BellSouth Post Hearing Brief at p. 70.

⁶²⁹ *Georgia/Louisiana Order* at ¶139.

⁶³⁰ *Id.*

provide access to its ordering functions in a nondiscriminatory manner.⁶³¹ Further, in assessing flow through performance, the FCC has emphasized a BOC's *capability* in flowing through CLEC orders, the BOC's ability to accurately process service orders, and the BOC's ability to provide timely Order Confirmation and Reject Notices. The FCC has in fact held that BOC is not accountable for competitive carrier decisions not to utilize electronic ordering systems even though available and CLEC caused errors when electronic ordering is utilized.⁶³²

Based on the criteria established by the FCC, we have looked to the totality of the circumstances as reflected in the evidence of record in arriving at our determination of whether BellSouth's ordering processes are nondiscriminatory in nature. In particular, we look to BellSouth's performance data with respect to BellSouth's provision of timely Order Confirmation and Reject Notices and BellSouth's accuracy in provisioning both manual and mechanized orders.

With respect to BellSouth's provisioning of timely Firm Order Confirmation notices for UNEs, we note that the benchmark for orders submitted electronically requires that 95% of the FOCs be returned within three hours. In July, August, and September of 2001, BellSouth returned 98%, 98% and 99% respectively, of all mechanized UNE FOCs within the three hour benchmark. For partially mechanized orders, the benchmark for July activity was greater than or equal to 85% returned within 18 hours. BellSouth exceeded this benchmark for July with 94% of FOCs returned within the 18 hour period. In August 2001, the benchmark was modified to greater than or equal to 85% within 10 hours. BellSouth exceeded this benchmark in both August and September with 94% of Rejects returned within the 10 hour interval in each month.

For LSRs submitted manually, the benchmark is greater than or equal to 85% returned within 36 hours. In July, August, and September 2001, BellSouth returned 98%, 99%, and 99% respectively, of FOCs from manual LSRs within the benchmark period. Although BellSouth did not meet all benchmarks for all categories in July through September 2001 for UNEs, it appears that the individual measures for which benchmarks were not achieved were not reflective of distinct patterns or systemic

⁶³¹ See *Bell Atlantic New York Order*, 15 FCC Rcd. at 4034-35, ¶¶161-163; *SWBT Texas Order*, 15 FCC Rcd. at 18443-44, ¶179.

⁶³² *Verizon Massachusetts Order*, 16 FCC Rcd. at 9030-31, ¶78; *Bell Atlantic New York Order*, 15 FCC Rcd. at 4039-40, 4049, ¶¶167, 181; *Second Louisiana Order*, 13 FCC Rcd. at 20674, ¶111.

ordering process deficiencies.⁶³³ We thus conclude that BellSouth's performance with respect to the issuance of Firm Order Confirmations is more than acceptable.

BellSouth's performance with respect to the timely issuance of UNE Order Rejection Notices during the July through September timeframe also appears to be satisfactory. In fact, for the months of July, August, and September respectively, BellSouth met 96%, 96%, and 94% of the established benchmarks. For orders submitted electronically, the benchmark is 97% within one hour. In July, August, and September, 93%, 94%, and 91% respectively, of the rejected service requests were delivered within the one hour time period. For partially mechanized orders, the benchmark for July 2001 was greater than or equal to 85% within 18 hours. In July BellSouth exceeded this benchmark with 97% of the reject notices returned within the 18 hour period. In August 2001 the benchmark was modified to greater than or equal to 85% within 10 hours. BellSouth exceeded this benchmark in both August and September with 96% of Rejects returned within the 10 hour interval in each month. For manual orders, the benchmark is 85% within 24 hours. BellSouth exceeded this requirement for July, August, and September with 97% of the LSRs submitted manually in all three months being returned to CLECs within the 24 hour time period.⁶³⁴

BellSouth admittedly encountered difficulty in achieving the established benchmark of 97% within one hour for the issuance of UNE Reject Notices for electronically submitted orders during the July through September time period for certain categories of orders. In particular, BellSouth failed to achieve the benchmark for COMBO Loop and Port orders, 2-Wire Analog Loop Design orders, Other Design orders, Other Non-Design orders, and LNP (stand alone) orders. BellSouth maintains that it learned from a root cause analysis wherein the above categories were investigated, that many of the LSRs in the aforementioned categories did not meet the benchmark because they were issued between 11:00 P.M. and 4:30 A.M., a time when BellSouth's systems are unable to process LSRs because the back end legacy systems are out of service. BellSouth accordingly asserts that it would be appropriate to exclude such LSRs from the Reject Interval measurement. BellSouth also contends that its performance in the aforementioned categories is inappropriately understated due to a

⁶³³ BellSouth Exhibit 352.

⁶³⁴ *Id.*

timestamp identification change which prevented BellSouth from identifying multiple issues of the same version of LSRs that may be rejected and thus should be excluded from the reject interval measurement.⁶³⁵

BellSouth's performance with respect to UNE FOC and Reject Response Completeness for the Mechanized, Partially Mechanized, and Non-Mechanized categories during the month of September 2001 was exemplary. For the Mechanized category, BellSouth achieved the established benchmark of greater than or equal to 95% for nine of the nine measurements for which there were CLEC activity. For the Partially Mechanized category, BellSouth achieved the benchmark in nine of the ten categories for which there was CLEC activity. For the Non-Mechanized category, BellSouth achieved the benchmark 10 of the 13 measurements for which there was CLEC activity.

BellSouth's performance with respect to UNE FOC and Reject Response Completeness (Multiple Responses) for the Mechanized, Partially Mechanized, and Non-Mechanized categories was less than exemplary, however. In particular, for the Multiple Responses - Mechanized Category, BellSouth achieved the benchmark of greater than or equal to 95% in 5 of the 9 categories for which there was CLEC activity. For the Multiple Responses – Partially Mechanized category, BellSouth achieved the benchmark in 6 of 10 measurements for which there was CLEC activity. With respect to the Multiple Response's - Non-Mechanized category, BellSouth achieved the benchmark in only 6 of the 13 categories for which there was CLEC activity. BellSouth attributes the difficulties it encountered in meeting the benchmarks for the various Multiple Responses categories to a coding error that resulted in the failure to include rejections that were classified as "auto clarifications". BellSouth notes that it is in the process of rewriting the code to correct this problem. We find that once implemented, BellSouth's coding changes will rectify the less than exemplary performance currently reflected in BellSouth's performance data for Multiple Response orders. We thus conclude that BellSouth's overall performance with respect to the issuance of UNE FOC and Reject Response Completeness is satisfactory.

⁶³⁵ *Id.* at p. 12.

With respect to BellSouth's resale ordering performance across the Mechanized, Partially Mechanized, and Non-Mechanized categories, we note that in September 2001 BellSouth achieved the Reject Interval benchmark for 9 of the 13 submetrics for which there was CLEC activity. There is no indication of systemic difficulties in the submetric categories which were not achieved.

With regard to resale, FOC Timeliness, BellSouth achieved the benchmark for 9 of the 12 submetrics across the Mechanized, Partially Mechanized, and Non-Mechanized categories for which there was CLEC activity during September 2001. There was again no indication of systemic difficulties in the submetric categories where the benchmark was not achieved.

BellSouth's resale FOC and Reject Response Completeness Performance for September of 2001 was also acceptable across the Mechanized, Non-Mechanized, and Partially Mechanized categories. In fact, BellSouth achieved 11 of the 13 submetrics for which there was CLEC activity. BellSouth's performance for the Multiple Response measures for those same categories was not as good, however. In those categories BellSouth achieved the benchmark in only 6 of the 13 submetrics for which there was CLEC activity. BellSouth attributes its difficulties in this regard to the "auto clarification" and time stamped coding issues which were discussed previously with regard to the Multiple Response metrics for UNEs. As we previously held with regard to UNEs, we find that BellSouth's coding changes will likely alleviate the problems encountered by BellSouth with respect to Multiple Response resale orders.

Having determined that BellSouth has satisfactorily performed with regard to the issuance of resale and UNE Order Completion and Reject Notices, we now move to an assessment of BellSouth's flow through performance. As of September 2001, BellSouth's percent flow through service request performance for resale residence orders was 90.39% which is comparatively close to the benchmark of 95%. For business resale orders, BellSouth's percent flow through for the month of September 2001 was 68.47%, well below the 90% benchmark.

BellSouth attributes the lower business flow through rates to the fact that business LSRs are more complex than typical LSRs and accordingly entail a greater probability for error. BellSouth notes that it has established a flow through improvement

program management process that includes seven different internal organizations for purposes of performing an ongoing analysis to determine trends and identify flow through problems. BellSouth anticipates that the enhancements which will be developed as a result of these efforts will improve BellSouth's flow through performance.⁶³⁶

We note that BellSouth's UNE flow through performance for September 2001 was 79.33% which approaches the benchmark of 85%. For LNP orders, BellSouth's percent flow through performance for September 2001 was 86.96% which exceeds the benchmark of 85%.⁶³⁷

Although we have reservations concerning BellSouth's flow through performance with respect to resale business orders, we do recognize that business orders are more complex and that BellSouth has implemented procedures aimed at improving its flow through performance in this area. Further, we are encouraged by the fact that numerous CLECs have been able to achieve percent flow through rates well above the average percent flow through rates in each category reported by BellSouth.

Coupled with BellSouth's overall demonstration that it is providing timely and accurate Order Confirmation and Order Reject Notices, we conclude that BellSouth has proven that its UNE ordering processes are nondiscriminatory and provide competitors with a meaningful opportunity to compete. Further, we find that BellSouth is capable of provisioning CLEC resale orders in substantially the same time and manner as it does for its retail operations. BellSouth's recent implementation of parsed CSRs and migration by telephone number only enhance this conclusion.

Our above conclusions are also strengthened by the recent findings of the FCC in its *Georgia/Louisiana Order* wherein the FCC concluded that based on the totality of the circumstances, BellSouth's OSS are capable of flowing through UNE orders in a manner that affords competing carriers a meaningful opportunity to compete. The FCC further concluded that BellSouth is capable of flowing through resale orders in substantially the same time and manner as it does for its own retail customer orders.⁶³⁸ In particular, the FCC found that BellSouth is capable of flowing through competitive LEC orders, is accurately processing Service Orders, and is providing timely Order

⁶³⁶ BellSouth Exhibit 352 pp. 24-25.

⁶³⁷ *Id.*

Confirmation and Reject Notices.⁶³⁹ In arriving at its findings in this regard, it is important to note that the FCC rejected CLEC arguments which were virtually identical to those raised in this jurisdiction.

Provisioning

The provisioning issues emphasized by the CLEC intervenors in this cause include the AT&T and Covad allegation that BellSouth's OCI and TSOCT performance fail to satisfy the requirements of the Act. In particular, AT&T and Covad contend that BellSouth's performance data indicate that BellSouth takes approximately twice as long, on average, to complete CLEC orders as it does to complete its own retail orders.⁶⁴⁰ AT&T and Covad reject out of hand BellSouth's claims that its delayed completion of CLEC orders is attributable to end users missing appointments and/or CLECs failing to properly code orders which request later due dates.⁶⁴¹

WorldCom and AT&T raise additional provisioning issues with respect to BellSouth's provisioning of UNE-P service. In particular, WorldCom alleges that BellSouth's excessive reliance on manual processing of electronically submitted UNE-P orders results in an unacceptable level of customers losing dial tone even though no wiring changes are involved in the customer's conversion. Through September 23, 2001, WorldCom asserts that 3% of its migrated customers in Georgia lost dial tone or the ability to receive calls after migration to WorldCom.⁶⁴² Both WorldCom and AT&T contend that at least some of the difficulties experienced by migrated customers is attributable to BellSouth's two order process which involves a "D" order to disconnect a customer's old service and a "N" order to establish new service with a CLEC. WorldCom contends that BellSouth must implement a single "C" ordering process for UNE-P before it can claim that it provides parity service.

WorldCom dismisses BellSouth's attempts to explain the loss of dial tone problems encountered by WorldCom customers by claiming that when it assessed a sample of 141 LSRs submitted by WorldCom, it found in most cases following a test of

⁶³⁸ *Georgia/Louisiana Order* at ¶143.

⁶³⁹ *Id.* at ¶148.

⁶⁴⁰ Tr. pp. 2945-2946 (*Bradbury*).

⁶⁴¹ Additional provisioning issues with respect to "Hot Cuts" are addressed in our discussion of Checklist Item 4.

⁶⁴² Tr. p. 4647 (*Lichtenberg*).

a customer's line that no problems were present, or that the problems discovered were attributable to the end user.⁶⁴³

With respect to WorldCom and AT&T's claims regarding the need for a single "C" ordering process to successfully migrate UNE-P customers, BellSouth argues that a single "C" ordering process is not necessary for 271 compliance as found by the FCC in its *SWBT Kansas/Oklahoma Order*. Specifically, BellSouth points out that in Kansas, Southwestern Bell did not have a single "C" ordering process, but instead had the same multiple order process utilized by BellSouth. As noted by BellSouth, Southwestern Bell nonetheless received 271 approval for Kansas.⁶⁴⁴ Despite the foregoing, BellSouth points out that it is in the process of implementing a single "C" ordering process sometime during the year 2002.⁶⁴⁵

Our review of the record in this cause reveals that BellSouth has met 84%, 85%, and 89% of the overall UNE provisioning measurements in July, August, and September 2001, respectively. In particular, BellSouth met the UNE Order Completion Interval analog for every CLEC category for which there was activity during September, 2001. Similarly, BellSouth met the UNE Held Order analog for every category for which there was CLEC activity during September 2001. BellSouth also met the UNE Percent Jeopardies Mechanized analog for 10 of the 11 categories for which there was CLEC activities during September 2001 and achieved the benchmark of greater than or equal to 48 hours for the issuance of the UNE Average Jeopardy Notice Interval – Mechanized for all five categories for which there was CLEC activity during September 2001. Similarly, BellSouth met the UNE Percent Jeopardy Notice Greater Than or Equal to 48 hours - Mechanized benchmark in four of the five categories for which there was CLEC activity during September 2001. BellSouth also achieved the UNE Percent Missed Installation Appointments analog for 17 of the 20 categories for which there was CLEC activity during the month of September 2001. With respect to UNE Percent Provisioning Troubles Within 30 days, BellSouth achieved the analog for 13 of the 17 categories for which there was CLEC activity during September 2001. With respect to UNE Average Completion Notice Interval - Mechanized, BellSouth achieved the retail

⁶⁴³ Tr. pp. 4455-4458 (*Ainsworth*).

⁶⁴⁴ *Citing Kansas/Oklahoma Order* at ¶153.

⁶⁴⁵ Tr. pp. 1197-1200 (*Ainsworth*).

analog in 13 of the 16 categories for which there was CLEC activity during September 2001.

BellSouth's UNE Service Order Accuracy performance does give rise to some concerns given the fact that BellSouth failed to achieve the benchmark of greater than or equal to 95% in 4 of the 7 submetrics for which there was CLEC activity in September 2001. In light of BellSouth's overall satisfactory performance, however, we believe that BellSouth's Service Order Accuracy deficiencies would best be handled by including the Service Order Accuracy penalty which BellSouth agreed to incorporate into its Self Effectuating Enforcement Mechanism ("SEEM") in its Georgia/Louisiana 271 application before the FCC.

With respect to BellSouth's resale provisioning performance, we note that BellSouth achieved equity in every submetric for which there was CLEC activity in September 2001 for the OCI, Held Order, Percent Jeopardies – Mechanized, Average Jeopardy Notice Interval – Mechanized and Percent Jeopardy Notice Greater Than or Equal To 48 Hours – Mechanized. For the percentage Missed Installation Appointment Metric for September 2001, BellSouth achieved equity in 13 of the 14 submetrics for which there was CLEC activity. BellSouth achieved equity in the percent Provisioning Troubles Within 30 Days metric for 12 of the 15 submetrics for which there was CLEC activity. For the September 2001 Average Completion Notice Interval – Mechanized, BellSouth achieved equity in all 8 of the submetrics for which there was CLEC activity.

With respect to BellSouth's resale Service Order Accuracy, BellSouth achieved equity in 4 of the 7 submetrics for which there was CLEC activity. BellSouth fell just short of achieving equity in 2 of those failed submetrics.

We conclude that the aforementioned performance data demonstrates that BellSouth is satisfactorily provisioning CLEC resale orders in a nondiscriminatory fashion and UNE orders in a manner that offers competitors a meaningful opportunity to compete. With respect to BellSouth's provisioning of UNE-P orders, we concur with BellSouth's contention that a single "C" order is not necessary in order to obtain 271 approval. We do, however, encourage BellSouth to implement the single "C" ordering process as early as possible in order to further enhance its provisioning of UNE-P conversions.

Maintenance and Repair

The primary issue raised by the CLEC intervenors with respect to BellSouth's maintenance and repair OSS functions relate to AT&T's assertion that BellSouth's TAFI interface must be integrated into AT&T's back office system in order for BellSouth to provide parity access to its maintenance and repair systems.⁶⁴⁶ BellSouth responds to the contention of AT&T in this regard by pointing out that the FCC, in its *Bell Atlantic New York Order*, stated that it does not require BOCs to provide an integratable machine to machine maintenance and repair interface.⁶⁴⁷ BellSouth further points out that in the *SWBT Texas Order*, the FCC reaffirmed its position in this regard stating that "a BOC is not required for the purpose of satisfying Checklist Item 2 to implement an application to application interface for maintenance and repair functions."⁶⁴⁸

Our review of the record in this cause and the prevailing orders of the FCC lead us to conclude that BellSouth need not integrate TAFI with its other systems because BellSouth has demonstrated that CLECs have equivalent access to the same maintenance and repair functionality as BellSouth's retail operations. This is a conclusion that was recently affirmed by the FCC in its *Georgia/Louisiana Order*.⁶⁴⁹

In short, we conclude that BellSouth offers CLECs electronic interfaces for trouble reporting which provides CLECs with access to the maintenance and repair functions offered by BellSouth in substantially the same time and manner as BellSouth offers such access for its retail operations. BellSouth offers such access through TAFI and its Communications Trouble ("*ECTA local interfaces*"). TAFI is in fact the same system BellSouth uses for its retail units.

Our above conclusion is further supported by the fact that BellSouth met the applicable performance standard for 92% of the overall UNE maintenance and repair measurements in July 2001, for 93% in August 2001, and for 96% in September 2001. For September 2001, BellSouth met 19 of the 20 UNE Missed Repair Appointment submetrics; all 20 of the Customer Trouble Report Rate submetrics for which there was CLEC activity; all 20 of the Maintenance Average Duration submetrics for which there was CLEC activity; 19 of the 20 percent Repeat Troubles Within 30 days submetrics for

⁶⁴⁶ There are, however, other maintenance and repair type issues which are addressed in our discussion of other checklist items.

⁶⁴⁷ *Bell Atlantic New York Order*, 4069.

⁶⁴⁸ *SWBT Texas Order*, note 565.

which there was CLEC activity; and 19 of the 20 Out of Service For More Than 24 Hours submetric for which there was CLEC activity.

With respect to BellSouth's resale maintenance and repair performance, we note that BellSouth achieved equity in all 12 of the September 2001 submetrics for Missed Repair Appointments, 7 of the 12 Customer Trouble Report Rate submetrics for which there was CLEC activity during September 2001 and 11 of the 12 Maintenance Average Duration submetrics for which there was CLEC activity during September 2001. BellSouth also achieved equity in 9 of the 12 Percent Repeat Troubles Within 30 Days submetric for which there was CLEC activity during September 2001. For the Out of Service Greater Than 24 Hours metric, BellSouth achieved equity in all 12 of the submetrics for September 2001.

We conclude that BellSouth's performance with respect to maintenance and repair is exemplary and without question demonstrates that CLECs have nondiscriminatory access to BellSouth's maintenance and repair OSS functions. More specifically, we find that BellSouth has deployed the necessary interfaces, systems and personnel to enable requesting carriers to access the same maintenance and repair functions that BellSouth provides itself. Further, we conclude the competing carriers have access to these functions in substantially the same time and manner as BellSouth's resale operations and with an equivalent level of quality.

Billing

WorldCom asserts that it has experienced billing difficulties because of inadequacies in BellSouth's billing systems. In particular, WorldCom alleges that double billing of customers results because CLECs receive a completion notice once their orders have been completed in the Service Order Control system ("SOCS"), but before BellSouth's billing records are updated. WorldCom asserts that this issue must be addressed before the Commission can recommend interLATA authority for BellSouth.⁶⁴⁹ AT&T raised similar concerns with respect to BellSouth's billing systems.

⁶⁴⁹ *Georgia/Louisiana Order* at ¶171.

⁶⁵⁰ Tr. pp. 4550-4551 (*Lichtenberg*).

BellSouth contends that the CLECs have not identified billing difficulties which are systemic in nature. BellSouth instead asserts that the billing difficulties cited by the CLECs are limited in scope and have been addressed fully by BellSouth.⁶⁵¹

We note that BellSouth provides CLECs with usage data via three avenues – the Optional Daily Usage File (“ODUF”); the Access Daily Usage File (“ADUF”); and the Enhanced Optional Daily Usage File (“EODUF”). We conclude that these interfaces allow CLECs to process call records in their billing systems in substantially the same time and manner that BellSouth processes these types of records in its own systems. We concur with BellSouth that the billing difficulties cited by the CLECs do not amount to systemic problems. This conclusion is supported by BellSouth’s billing performance data. With respect to UNE Invoice Accuracy, BellSouth’s September 2001 performance data reveals that BellSouth experienced an accuracy rate of 98.92% while the CLECs experienced an accuracy rate of 97.98%. BellSouth attributes this minor deficiency to the incorrect billing of two CLEC customers, a problem which has since been corrected. With respect to general billing measures, BellSouth achieved equity on 9 of the 10 submetrics. BellSouth also achieved equity in September 2001 for Resale Invoice Accuracy and Mean Time to Deliver Invoices – CRIS. BellSouth’s performance data leads us to conclude that BellSouth offers its competitors access to nondiscriminatory access to billing functions.

Conclusion

Based on the foregoing findings, we conclude that BellSouth has demonstrated that it provides its competitors with nondiscriminatory access to its OSS and thus satisfies the requirements of Checklist Item 2 with regard to its OSS.

IT IS SO ORDERED BY THE COMMISSION.

(ii) BellSouth’s Change Management Process

Having already determined that BellSouth has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions, we now review BellSouth’s Change Management Process (or “CCP”) in an effort to determine if BellSouth is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them.

⁶⁵¹ Tr. p. 4342 (Scollard).

The change management process refers to the methods and procedures that a BOC employs to communicate with competing carriers regarding performance of and changes in its OSS systems. Such changes may include updates to existing functions that impact competing carrier's interfaces upon a BOC's release of new interface software; technology changes that require competing carriers to meet the new technical requirements upon a BOC's software release date; additional functionality changes that may be used at the competing carriers option, on or after a BOC's release date for new interface software; and changes that may be mandated by regulatory authorities.

In evaluating whether a BOC's change management plan affords an efficient competitor a meaningful opportunity to compete, the FCC has established a two step process. The first step is to assess whether the BOC's change control plan is adequate. In making this determination, the FCC has established that BOCs must demonstrate: (1) that information relating to the change management process is clearly organized and readily accessible to competing carriers; (2) that competing carriers had substantial input in the design and continued operation of the change management process; (3) that the change management plan defines a procedure for the timely resolution of change management disputes; (4) the availability of a stable testing environment that mirrors production; and (5) the efficacy of the documentation that the BOC makes available for the purpose of building an electronic gateway. After determining whether the BOC's change management plan is adequate, it must then be determined whether the BOC in question has demonstrated a pattern of compliance with its change control plan.⁶⁵²

The CLEC intervenors generally contend that BellSouth's change management process is inadequate and that BellSouth fails to adhere to its change management procedures. In particular, the CLECs contend that BellSouth disregards CLEC input and exercises a unilateral veto power;⁶⁵³ delays or fails to implement CLEC initiated requests;⁶⁵⁴ fails to provide an adequate testing environment;⁶⁵⁵ and precludes CLECs

⁶⁵² *SWBT Texas Order* at ¶¶105-108.

⁶⁵³ Tr. p. 2889 (*Bradbury*).

⁶⁵⁴ Tr. pp. 2911-2912 (*Bradbury*), WorldCom Post Hearing Brief at pp. 18-19.

⁶⁵⁵ Tr. pp. 2968-2969 (*Bradbury*).

from making informed, efficient decisions regarding the prioritization of work on gateway interfaces that will be affected by upcoming programming releases.⁶⁵⁶

BellSouth counters the CLEC criticisms of its change management process by noting that as of February 2001, BellSouth had implemented 81 CLEC initiated requests but had implemented only 45 BellSouth initiated requests. BellSouth thus contends that it has attempted to provide CLECs with substantial input in the design and continued operation of the change management process and has made a concerted effort to incorporate all reasonable requests for change in its CCP.⁶⁵⁷ BellSouth contends that no CLEC has introduced specific testimony indicating that BellSouth has modified its CCP inappropriately. BellSouth also points out that no CLEC has thus far utilized the escalation option which allows CLECs to escalate CCP disputes to state regulatory authorities such as this Commission.⁶⁵⁸

BellSouth further argues that its current testing environment and its new optional CLEC Application Verification Environment ("CAVE") satisfy the FCC's requirements regarding testing. BellSouth also points to KPMG's findings in the Georgia third party test indicating that, with respect to BellSouth's release of OSS 99, BellSouth satisfactorily provided functional testing environments to CLECs for all supported interfaces thereby demonstrating that the testing environment is stable and capable of certifying whether a CLEC's OSS will interact smoothly and effectively with a BOC's OSS.⁶⁵⁹

We find from our review of the record that BellSouth's change management documentation is clearly organized and readily accessible to competing carriers in a document which adequately explains the types of changes that are handled, how change requests are classified, the escalation process, the dispute resolution process, and the testing environment. We note that KPMG also found that BellSouth's CCP documents clearly define the change management process responsibilities in the Georgia third party test.

We further find that BellSouth's change control process allows for substantial input from competing carriers. BellSouth has demonstrated that it actively sought the

⁶⁵⁶ Tr. pp. 3629-3630 (*Conquest*).

⁶⁵⁷ Tr. pp. 582-583 (*Pate*).

⁶⁵⁸ Tr. pp. 569-570 (*Pate*).

⁶⁵⁹ Supplemental Test Plan Final Report, CM-2-1-6, p. VII-A-22.

participation of competing carriers; held numerous meetings of interested carriers; and established a steering committee to address issues related to interface enhancements.

We further find that BellSouth makes available sufficiently detailed interface design specifications to competing carriers. These specifications enable those competing carriers to modify or design their systems in a manner that enables them to communicate with the BellSouth systems and any relevant interfaces.

We further find that BellSouth has in place measures to adequately address CCP disputes. We find it interesting that no party has utilized the escalation option which allows disputes to be brought before state Commissions.

As an additional requirement for insuring a sufficient change management process, BellSouth must provide competing carriers with access to a stable testing environment to certify that their OSS will be capable of interacting smoothly and effectively with BellSouth's OSS. A BOC must provide a testing environment that mirrors the production environment in order for competing carriers to test new releases.⁶⁶⁰ We find that BellSouth affords carriers an adequate opportunity to test BellSouth's OSS changes prior to implementation. In particular, BellSouth provides an open and stable testing environment for the machine to machine EDI and TAG interfaces. We, therefore, find that the testing environment BellSouth makes available provides carriers with a meaningful opportunity to compete.

We further find that BellSouth offers to CLECs appropriate documentation and training on its electronic interfaces as well. We find that the help desk support which BellSouth now provides further enhances BellSouth's documentation and training.

Despite the CLEC Intervenor contentions to the contrary, we also conclude that BellSouth has generally demonstrated a pattern of compliance with this documented change management processes and procedures. We thus find that BellSouth's change control process allows efficient competitors a meaningful opportunity to compete.

In conclusion, we find that BellSouth has in place an adequate change management process. More specifically, we conclude that BellSouth's change control process enhances our previous finding that the nondiscriminatory OSS access offered by BellSouth provides its competitors with a meaningful opportunity to compete. The

⁶⁶⁰ *SWBT Texas Order* at ¶132.

fact that KPMG's third party testing of BellSouth's change control process yielded favorable results strengthens our conclusion in this regard. Our conclusions are further strengthened by the fact that the FCC reached relatively identical conclusions regarding BellSouth's Change Control Process in its *Georgia/Louisiana Order* and in so doing rejected CLEC arguments which were virtually identical to those raised in this jurisdiction.⁶⁶¹

(iii) BellSouth's Reliance on the Georgia Third Party Test

BellSouth has throughout its presentation of evidence in this proceeding relied on the results of the Georgia third party test conducted by KPMG to supplement its evidence of actual commercial usage in Alabama. BellSouth's reliance on the Georgia third party test results is premised on BellSouth's representation that its OSS are regional in nature and that the Georgia third party test results are thus appropriate for consideration in Alabama.

The CLEC intervenors have vehemently opposed BellSouth's reliance on the Georgia third party test on a number of grounds. In addition to the representation that BellSouth's OSS are not sufficiently regional in nature to justify the adoption of the Georgia third party test results in Alabama, the CLECs generally contend that the Georgia test does not establish that BellSouth's systems can handle commercial volumes; that key areas were not tested adequately in Georgia; that the Georgia third party test does not provide an accurate portrait of BellSouth's OSS performance in Alabama; that BellSouth failed to meet test criteria in Georgia in key areas; that KPMG was not an independent tester; that crucial testing activities are not yet concluded in Georgia; and that the OSS testing in Florida continues to uncover significant problems in key areas.

Given the FCC's finding in its recent *Georgia/Louisiana Order* that BellSouth's OSS are regional in nature with respect to Georgia and Louisiana, as well as the FCC's conclusions regarding the overall appropriateness of the third party test conducted by KPMG in Georgia, we find that a detailed discussion of each point of contention raised by the CLEC intervenors in this cause with regard to the regionality of BellSouth's OSS and the appropriateness of the Georgia third party test would serve no useful purpose.

⁶⁶¹ *Georgia/Louisiana Order* at ¶¶179-198.

Our approach in this regard is influenced heavily by the fact that the evidence which BellSouth submitted in this jurisdiction in support of its regionality and Georgia third party test arguments is substantially similar to the evidence relied upon by the FCC in reaching its conclusions in the *Georgia/Louisiana Order*. We are further persuaded by the fact that the FCC rejected CLEC arguments which were virtually identical to those raised in this jurisdiction in arriving at the decisions rendered in the *Georgia/Louisiana Order* with respect to the regionality of BellSouth's OSS and the appropriateness of the Georgia third party test.⁶⁶²

Based on the foregoing, we conclude that the FCC's findings of regionality and the appropriateness of the Georgia third party test are equally applicable to Alabama. We, therefore, hold that BellSouth has satisfactorily demonstrated that its systems in Alabama are sufficiently similar to its systems in Georgia and that the results of the Georgia third party test may be relied upon by BellSouth in support of its application in Alabama. We note that the Commission will monitor the ongoing third party test currently underway in Florida and will take appropriate remedial action should the Florida test reveal deficiencies which justify such action. At this point, however, we find as the FCC did in its *Georgia/Louisiana Order*, that the CLEC intervenors in this cause have not provided sufficient evidence demonstrating a systemic problem with BellSouth's OSS or why the exceptions and observations from the Florida test require a denial of BellSouth's request for 271 relief.⁶⁶³

(iv) UNE Combinations

The CLEC intervenors assert that BellSouth's policy of refusing to provide UNE combinations to CLECs for specific customers at UNE cost-based rates unless the specific elements which make up the combination for that customer are physically combined at the time of the request, and are being used by BellSouth to provide service to that specific customer, is discriminatory and inhibits their ability to serve new customers or provide existing customers with additional lines.⁶⁶⁴ The CLECs contend that the Commission should require BellSouth to provide UNEs to CLECs in combined form when those UNEs are ordinarily combined within BellSouth's network just as the

⁶⁶² *Georgia/Louisiana Order* at ¶¶103-111.

⁶⁶³ *Georgia/Louisiana Order* at ¶106.

⁶⁶⁴ Tr. p. 2857 (*Guepe*) and Tr. pp. 2503-2507 (*Gillan*).

state commissions in Georgia, Kentucky, South Carolina, Tennessee, Louisiana, and Mississippi have done.

BellSouth strongly disputes the CLEC position that it should be required to provide combinations of elements if it currently combines such elements anywhere in its network. BellSouth in fact contends that it is not required pursuant to existing FCC regulations to do so.⁶⁶⁵ BellSouth further disputes the CLEC assertion that its practice of charging CLECs for combining currently uncombined unbundled network elements on their behalf is discriminatory.

BellSouth further stresses that all it is required to demonstrate for §271 purposes is that it has a legal obligation to provide access to UNE combinations in accordance with the FCC requirements. BellSouth contends that the arguments offered by the CLECs in support of their position that the Commission should impose requirements above and beyond the conditions required by Checklist Item 2 are unpersuasive. BellSouth surmises that there is no justification for compelling it to combine currently uncombined UNEs at TELRIC based rates, particularly since imposing such a requirement would be contrary to the Act's fundamental goal of encouraging facilities based competition.⁶⁶⁶

We note that the Commission has previously considered the arguments advanced on both sides of this issue in the context of the UNE pricing proceedings conducted in our Docket 27821. In our Order entered in that Docket on May 31, 2002, we concluded that the "currently combines" language of FCC Rule 47 CFR 51.315(b) should be interpreted to require BellSouth to provide combinations of UNEs that it ordinarily and typically combines in the normal course of operating its network, even if the particular elements being ordered are not physically connected at the time the order is placed.

We adopted the aforementioned UNE combination policy with full knowledge of the United States Supreme Court's recent decision in *Verizon Communications, Inc. v. FCC*.⁶⁶⁷ Our review of the Supreme Court's decision in *Verizon Communications* led us to conclude that nothing in said decision required us to revisit our policy concerning UNE combinations. Although the Supreme Court made numerous references in its

⁶⁶⁵ Tr. p. 123 (*Ruscilli*).

⁶⁶⁶ Tr. p. 202-205 (*Ruscilli*).

opinion to the inability of requesting carriers to combine elements as impacting the incumbents ILEC's obligation to perform the combination of elements, it appeared to us that those discussions by the Supreme Court were primarily aimed at scenarios where new entrants request the incumbent to perform combinations of elements that are not ordinarily combined in the incumbent's network. We accordingly concluded that nothing in the Supreme Court's *Verizon Communications* decision required us to revisit the UNE combination policy requiring BellSouth to combine elements that are ordinarily and/or typically combined in its network.

We reaffirm in this proceeding the aforementioned UNE combination policy adopted in our May 31, 2002 Order in Docket 27821. As stated in said Order, we will naturally follow the FCC's further proceedings on UNE combinations with great interest and promptly implement any modifications to our UNE combination policy required thereby.

(v) Conclusion

Based on the foregoing, we find BellSouth compliant in all respects with respect to Checklist Item 2.

IT IS SO ORDERED BY THE COMMISSION.

4. Checklist Item 3 – Non-discriminatory Access to Poles, Ducts, Conduits, and Rights of Way in accordance with the Requirements of §224

(a) The Requirements of the Act

Bell Operating Companies are required by §271(c)(2)(b) to offer “[n]ondiscriminatory access to the poles, ducts, conduits, and rights of way owned or controlled by the [BOC] at just and reasonable rates in accordance with the requirements of §224”. Section 224 of the Act establishes the jurisdictional dichotomy of the regulation of the rates, terms, and conditions of pole attachments between the FCC and state commissions. Section 224 also contains specific provisions concerning nondiscriminatory access; the imputation to cost of pole attachment rates; modification or alteration of poles, ducts, conduits or rights of way and the cost of rearranging or replacing attachments.

(b) The Position of BellSouth

⁶⁶⁷ 535 U.S. __ (2002) (“*Verizon Communications*”).

BellSouth notes that in the *Second Louisiana Order*, the FCC found that BellSouth had established nondiscriminatory procedures for access to its poles, ducts, conduits, and rights of way.⁶⁶⁸ BellSouth represents that it continues to offer, in various negotiated interconnection agreements and in Section 3 of its SGAT, nondiscriminatory access to poles, ducts, conduits, and rights of way in a timely fashion at rates that are just and reasonable. BellSouth maintains that its actions and performance remain consistent with the showing upon which the FCC previously determined that BellSouth satisfied the statutory requirements for Checklist Item 3. BellSouth further notes that no Intervenor has raised any concerns with respect to Checklist Item 3 and thus urges the Commission to find BellSouth compliant with respect to this item.

(c) The Decision of the Commission

Based on the foregoing, we find BellSouth compliant with this checklist item in all respects.

IT IS SO ORDERED BY THE COMMISSION.

5. Checklist Item 4 – Local Loop Transmission from the Central Office to the Customer’s Premises Unbundled from Local Switching and other Services

(a) The Requirements of the Act

A Bell Operating Company’s obligations with regard to the provision of local loop transmission from the central office to the customer’s premise unbundled from local switching and other services are established by the provisions of §271(c)(2)(B)(4). In addition, the FCC’s Rule 51.319⁶⁶⁹ requires BellSouth to provide nondiscriminatory access to specified network elements on an unbundled basis, including the local loop, to any requesting telecommunications carrier for the provision of a telecommunications service. The unbundled loop is defined as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC’s central office and the loop demarcation point at an end user customer premises, including inside wiring owned by the incumbent LEC.⁶⁷⁰

(b) The Position of BellSouth

(i) *Local Loops*

⁶⁶⁸ *Id.* at p. 87 [Citing *Second Louisiana Order*, 2076-12].

⁶⁶⁹ 47 CFR §51.319.

⁶⁷⁰ 47 CFR §51.319(a)(1).

BellSouth asserts that it make several loop types available to CLECs, including SL1 and SL2 voice grade loops, 2-wire ISDN digital grade loops, 2-wire ADSL loops, and unbundled loops served by integrated digital loop carrier (IDLC) technology. BellSouth further maintains that additional loop types are available to CLECs via the bona fide request (BFR) process.

BellSouth contends that the evidence introduced in this proceeding indicates that it allows CLECs to access unbundled loops at any technically feasible point and provides local loop transmission of the same quality as BellSouth provides to itself, with the same equipment and technical specifications used by BellSouth to serve its own customers. As of March 31, 2001, BellSouth represents that it has provided over 17,500 unbundled local loops to over 15 CLECs in Alabama and over 350,000 unbundled local loops to CLECs in BellSouth's nine state region.⁶⁷¹

In assessing a BOC's performance with regard to stand alone loop provisioning, BellSouth notes that the FCC examines the average Order Completion Interval (OCI), Missed Installation Appointments, Trouble Reports After Provisioning, and Mean Time to Repair measures.⁶⁷² BellSouth maintains that its performance measures in these areas show that it is providing local loops in compliance with §271 and the requirements of the FCC. In particular BellSouth notes that for OCI for 2-wire analog loops, it met or exceeded the retail analog for all of the submetrics with data from May through September 2001. For Missed Installation Appointments for 2-wire analog loops, BellSouth contends that it met or exceeded the retail analog for all submetrics from May through September 2001. BellSouth contends that its performance for loops on Percent Provisioning Troubles in 30 days is equally good for 2-wire analog loops with the company meeting or exceeding the retail analog for 18 of the 20 submetrics for CLEC data for May through September, 2001. Finally, BellSouth maintains that it met or exceeded the retail analog for 70 out of 77 submetrics for Missed Installation Appointments in every submetric for Maintenance Average Duration for May through September, 2001.

For loop/port combinations in May through September 2001, BellSouth contends that it met or exceeded the retail analog for OCI and Missed Installation Appointments

⁶⁷¹ BellSouth Post Hearing Brief at p. 88 [*Citing* Tr. pp. 1380-1381, 1470-1471 (*Milner*)].

⁶⁷² *Id.* at p. 89 [*Citing Verizon Massachusetts Order*, ¶162].

for 27 of 27 and 21 of 28 submetrics respectively. BellSouth contends that it performed equally well on Provisioning Troubles Within 30 days meeting or exceeding the retail analog for 15 of the 24 two-loop/port submetrics where there was CLEC activity.⁶⁷³

(ii) Hot Cuts

BellSouth recognizes that hot cuts, the process of converting an existing BellSouth customer to the network of a competitor by transferring the customers in-service loops to the CLEC's network, is critically important to competition. BellSouth maintains its keen awareness of the FCC's notation that "[t]he ability of a BOC to provision working, trouble free loops through hot cuts is critically important in light of the substantial risks that a defective hot cut will result in competing carrier customers experiencing service outages for more than a brief period."⁶⁷⁴ BellSouth maintains that its data on hot cuts demonstrates that its performance is exemplary since BellSouth has missed on only two hot cut submetrics over the entire five month period from May through September of 2001.

BellSouth indicates that it has implemented three hot cut processes, two involving order coordination and one that does not. The first process, a time specific cut over, includes order coordination between BellSouth and the CLEC. For this first process, the CLEC requests both a due date and a specific time for the cutover to commence.

The second process, a non-time specific cutover, also includes coordination with BellSouth. For this process, however, the CLEC requests the date for the cutover. Before the cutover, the CLEC and BellSouth agree to a specific time for the cutover to commence. Under the third process, BellSouth specifies the date on which the cut is to occur but the time of the cutover is left to BellSouth's discretion.⁶⁷⁵

(iii) Access to Sub-Loop Elements

A sub-loop UNE is an existing portion of the loop that can be accessed at accessible points on the loop. BellSouth recognizes that this includes any technically feasible point near the customer premise such, as a pole or pedestal, the network interface device (the "NID"), or minimum point of entry to the customer's premises, the

⁶⁷³ *Id.* at p. 89.

⁶⁷⁴ *Id.* at p. 90 [*Citing* Tr. p. 1390 (*Milner*); and *SWBT Texas Order*, p. 18484].

⁶⁷⁵ Tr. p. 1390-1391 (*Milner*).

feeder distribution interface, the main distributing frame, remote terminals, and various other terminals.⁶⁷⁶

BellSouth contends that it offers CLECs nondiscriminatory access to subloop elements by offering loop concentration/multiplexing, loop feeder, loop distribution, intrabuilding network cable, and network terminating wire as sub-loop elements. BellSouth maintains that CLECs can request additional sub-loop elements via the BFR process. As of March 31, 2001, BellSouth represents that it has provided CLECs with over 500 sub-loop elements region-wide. BellSouth further points out that no CLEC has challenged BellSouth's claims with regard to its provision of access to sub-loop elements.⁶⁷⁷

(iv) Access to XDSL Capable Loops

BellSouth recognizes that it “must provision XDSL capable loops for competing carriers in substantially the same time and manner that it installs XDSL capable loops for its own retail operations.”⁶⁷⁸ In its *SWBT Texas Order*, the FCC commended the Texas Commission for developing comprehensive measures to assess Southwestern Bell's performance in the provisioning of XDSL capable loops and related services. BellSouth contends that it submitted comparable performance data specific to XDSL loops demonstrating that it is providing CLECs with nondiscriminatory access to such loops.⁶⁷⁹

BellSouth contends that it offers CLECs a variety of unbundled loops that may support DSL services, including ADSL capable loops; HDSL capable loops; ISDN loops; universal digital channel (“UDC”), universal copper loop (“UCL”), short and long; and UCL non-design (“UCL-ND”).⁶⁸⁰ As of March 31, 2001, BellSouth represents that it has provisioned 954 2-wire ADSL loops and 46 2-wire HDSL loops in Alabama.⁶⁸¹

For the pre-ordering of XDSL capable loops, BellSouth contends that it offers CLECs access to loop makeup (“LMU”) information through electronic and manual processes. BellSouth contends that it has fully demonstrated that CLECs have access to the same information as BellSouth's retail operations in the same manner and within

⁶⁷⁶ Tr. p. 1385-1386 (*Milner*).

⁶⁷⁷ BellSouth Post Hearing Brief at p. 93 [*Citing* Tr. p. 1385-1386 (*Milner*)].

⁶⁷⁸ *Id.* [*Citing SWBT Kansas/Oklahoma Order*, ¶185].

⁶⁷⁹ *Id.* [*Citing SWBT Texas Order*, ¶¶184-198].

⁶⁸⁰ Tr. p. 373-379 (*Latham*).

⁶⁸¹ Tr. p. 1389 (*Milner*).

the same timeframes.⁶⁸² In February 2001, BellSouth indicates that CLECs made 394 electronic queries for LMU information in Alabama and 4,283 region-wide.⁶⁸³

To further enable CLECs to provide high speed data services to their end users, BellSouth maintains that CLECs have the option of selecting the precise loop conditioning they desire through BellSouth's unbundled loop modification ("ULM") process. The ULM process removes any devices that may diminish the capability of the loop to deliver high-speed switched wireline capacity. BellSouth contends that CLECs only pay for the level of conditioning they select. BellSouth notes that it provides ULM upon request for an unbundled loop, regardless of whether BellSouth offers advanced services to end user customers on that loop or not.⁶⁸⁴ Through March 2001, BellSouth asserts that CLECs region-wide have made 59 requests for loop conditioning.⁶⁸⁵

BellSouth contends that it is meeting its obligation to provide XDSL capable loops and has met all of the submetrics for which there were data for XDSL loops in the categories of Order Completion Intervals, Missed Installation Appointments, and Percent Provisioning Within 30 days. In addition, BellSouth contends that it made 100% of the XDSL submetrics for Maintenance Average Duration and Missed Repair Appointments and made 100% of the submetrics for percent repeat troubles from May through September 2001.⁶⁸⁶

(v) Line Sharing

BellSouth recognizes that it must allow CLECs to provide high speed data service to BellSouth voice customers via line sharing. BellSouth further recognizes that it must provide line sharing in accordance with the obligations set forth in the FCC's *Line Sharing Order* and *Line Sharing Reconsideration Order*.⁶⁸⁷ BellSouth maintains that it has produced evidence demonstrating that it has fully complied with the aforementioned requirements.⁶⁸⁸

⁶⁸² BellSouth Post Hearing Brief at p. 94 [Citing Tr. pp. 383-384 (*Latham*); and the *SWBT Kansas/Oklahoma Order*, ¶122; and the *SWBT Texas Order*, 18435-18436].

⁶⁸³ Tr. p. 1388 (*Milner*).

⁶⁸⁴ Tr. p. 384-385 (*Latham*).

⁶⁸⁵ Tr. p. 1385 (*Milner*).

⁶⁸⁶ BellSouth Post Hearing Brief at pp. 94-95.

⁶⁸⁷ *Deployment of Wireline Services Offering, Advanced Telecommunications Capability and Implementation of Local Competition Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd. 20912 (1999) ("*Line Sharing Order*"); and *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Order on Remand, 15 FCC Rcd. 385 (1999) ("*Line Sharing Reconsideration Order*").

⁶⁸⁸ BellSouth Post Hearing Brief at p. 98 [Citing Tr. pp. 420-422 (*Williams*)].

BellSouth represents that it provides access to the high frequency portion of the loop as an unbundled network element. Like Southwestern Bell, BellSouth contends that it has developed the line sharing product in a collaborative effort with CLECs and is continuing to work cooperatively with the CLECs on an ongoing basis to resolve issues as they arise. BellSouth contends that the pre-ordering, ordering, provisioning, and maintenance and repair processes for its line sharing product are very similar to the processes for XDSL capable loops. For loop makeup information, BellSouth contends that the process is the same whether the CLEC wishes to obtain an XDSL capable loop or the high frequency portion of the loop. As of April 1, 2001, BellSouth represents that it has provisioned line sharing on 2,542 lines region-wide, including 217 lines in Alabama.⁶⁸⁹

BellSouth represents that it makes line sharing available to a single requesting carrier on loops that carry BellSouth's plain old telephone service ("POTS") so long as the XDSL technology deployed by the requesting carrier does not interfere with the analog voice band transmissions. BellSouth allows line sharing CLECs to deploy any version of XDSL that is presumed acceptable for shared line deployment in accordance with the FCC rules and that will not significantly degrade analog voice services.⁶⁹⁰

(vi) Line Splitting

BellSouth maintains that it facilitates line splitting between CLECs using UNEs acquired from BellSouth in full compliance with the FCC's rules. Specifically, BellSouth represents that it facilitates line splitting by cross connecting a loop and a switch port to the collocation space of either the voice CLEC or the data CLEC. The CLECs may then connect the loop and switch port to a CLEC owned splitter and split the lines themselves.⁶⁹¹ BellSouth maintains that its methods of facilitating line splitting are consistent with, or are the same as, those described by the FCC in the *SWBT Texas Order* and its *Line Sharing Reconsideration Order*.⁶⁹²

With regard to line splitting orders, BellSouth contends that it is able to accept CLEC manual line splitting orders today in full compliance with the FCC's requirements. BellSouth notes that the FCC recently clarified that "[t]he *Line Sharing Reconsideration*

⁶⁸⁹ Tr. p. 1388 (*Milner*).

⁶⁹⁰ Tr. p. 421-422 (*Williams*).

⁶⁹¹ Tr. pp. 436-439 (*Williams*).

⁶⁹² BellSouth Post Hearing Brief at p. 100.

Order does not require BOCs to have implemented an electric OSS functionality to permit line splitting”.⁶⁹³ BellSouth thus maintains that it has satisfied the statutory requirements for the ordering of line splitting.

(c) The Position of AT&T and Covad

(i) Overview

AT&T and Covad maintain that BellSouth continues to discriminate through the access it provides to unbundled local loops. More particularly, AT&T and Covad assert that BellSouth continues to discriminate in the provisioning of “hot cuts” and in the area of advanced services. AT&T and Covad state that BellSouth’s deficiencies are not necessarily in the area of its technical capability, but are instead related to BellSouth’s refusal to take steps that would ensure full and open competition.⁶⁹⁴

(ii) Hot Cuts

With regard to hot cuts, AT&T and Covad maintain that it is critical that the process be coordinated to run smoothly and predictably because any unexpected or prolonged service outage deters customers from using CLECs for the provision of local service and thereby inhibits competition.⁶⁹⁵ AT&T and Covad stress that reliability and predictability in the hot cut process are vital because the actual hot cut is the first time the customer experiences the results of the decision to move their local service from BellSouth to a CLEC. Failures in this process thus harm Alabama consumers and impede the ability of CLECs to compete.⁶⁹⁶ In order to maximize the predictability of its hot cuts, AT&T notes that it orders and pays a premium for the port and the loop “with coordination” so that it can plan for the hot cut to proceed at a scheduled time on a scheduled date.⁶⁹⁷

AT&T and Covad point out that the FCC recognized in its *SWBT Texas Order* that “the failure to provision hot cut loops effectively has a particularly significant adverse impact on mass market competition because [hot cuts] are a critical component of competing carriers’ efforts to provide service to small and medium sized business markets.”⁶⁹⁸ Since there is no retail analog for hot cuts, the ILEC must demonstrate that

⁶⁹³ *Id.* at p. 101 [Citing Tr. p. 695 (*Pate*) and the *Verizon Massachusetts Order*, ¶180].

⁶⁹⁴ AT&T Post Hearing Brief at p. 60.

⁶⁹⁵ Tr. p. 3156 (*Berger*).

⁶⁹⁶ Tr. p. 3144-3145 (*Berger*).

⁶⁹⁷ Tr. p. 3157 (*Berger*).

⁶⁹⁸ AT&T/Covad Post Hearing Brief at p. 62 [Citing *SWBT Texas Order*, ¶256].

it provides hot cuts “in a manner that offers an efficient competitor a meaningful opportunity to compete.”⁶⁹⁹

In order to meet the established standard and satisfy Checklist Item 4, AT&T and Covad maintain that ILECs must provide “hot cuts in a timely manner, at an acceptable level of quality, with minimal service disruption.”⁷⁰⁰ AT&T and Covad assert that BellSouth cannot meet this standard because it fails to deliver a reliable and predictable hot cut process.⁷⁰¹

AT&T maintains that when it requests a hot cut, it sends an electronic order to BellSouth for a coordinated cut over. AT&T contends that such orders are processed manually by BellSouth without verifying the connecting facility assignments (“CFAs”) to ensure that the appropriate facilities are available. Despite the associated unpredictability, BellSouth nonetheless issues a FOC setting a date and time for the cut over. Based on the information which BellSouth provides it, AT&T confirms the schedule with its customer. AT&T asserts that when BellSouth subsequently checks the CFA and finds a problem due to facilities unavailability, AT&T is forced to reschedule the cut over and to apologize to the customer who has rightfully relied on the previous schedule. AT&T contends that it is then seen as unreliable in the eyes of the customer.⁷⁰²

AT&T maintains that if it had access to BellSouth’s Loop Facility Assignment Control System (LFAC’s) database, it could check the CFA before sending an order to BellSouth. AT&T contends, however, that BellSouth has not yet provided AT&T access to LFACs even though it has agreed to do so.⁷⁰³ Until BellSouth provides access to LFACs as promised, AT&T asserts that CLEC hot cuts cannot be consistently provisioned in a timely manner with minimal disruptions of service. Because of the disparity between the hot cut service BellSouth provides itself and the CLECs, AT&T contends that BellSouth fails to meet its burden for Checklist Item 4.⁷⁰⁴

(iii) Advanced Services

⁶⁹⁹ *Id.* [Citing *SWBT Kansas Oklahoma Order*, ¶199; and *Bell Atlantic New York Order*, ¶291].

⁷⁰⁰ *Id.* [Citing *Verizon Massachusetts Order*, at ¶159; and *Bell Atlantic New York Order*, at ¶291].

⁷⁰¹ *Id.* [Citing Tr. p. 3145 (Berger)].

⁷⁰² Tr. p. 3145-3148 (Berger).

⁷⁰³ Tr. p. 3217 (Berger).

⁷⁰⁴ AT&T/Covad Post Hearing Brief at pp. 62-63.

With regard to the deployment of advanced services, AT&T and Covad maintain that BellSouth has a number of discriminatory policies that significantly inhibit CLECs from efficiently and effectively deploying innovative advanced service technologies in Alabama, particularly where digital subscriber line based service is concerned. AT&T and Covad note that the FCC has recognized that ILECs have “a concrete and specific legal obligation to provide unbundled XDSL capable loops to competing carriers.”⁷⁰⁵

In order to meet the needs of Alabama’s consumers, and to continue the rapid growth of advanced services and meaningful local competition in Alabama, AT&T asserts that CLECs must be able to offer customers XDSL service, either by itself or in combination with voice services. AT&T maintains, however, that BellSouth consistently precludes CLECs that use UNE-P from offering customers bundled voice and data services, while at the same time aggressively marketing a bundled package of such services to its customers.⁷⁰⁶ AT&T asserts that this practice has a particularly chilling effect on local competition for advanced services given that UNE-P has been recognized as the most effective broad-based strategy for reaching most residential and small business customers.⁷⁰⁷

AT&T further contends that BellSouth’s discriminatory policies extend to the broadband services it offers over fiber-fed next-generation digital loop carrier (NGDLC) architecture. AT&T concludes that BellSouth’s refusal to effectively provide for the addition of XDSL capabilities to UNE-P voice service inhibits competition in the markets for voice services, data services, and bundled services.⁷⁰⁸

AT&T further argues that BellSouth impairs the ability of CLECs to provide line sharing even though the FCC has repeatedly recognized that CLECs must have unbundled access to the high frequency portion of the loop through line sharing in order to facilitate competition in advance services.⁷⁰⁹ AT&T moreover asserts that the requirement to provide line sharing is equally applicable where the loop is served by a remote terminal as is the case in an NGDLC configuration.⁷¹⁰ NGDLC allows BellSouth to deploy fiber facilities from the central office to a remote terminal. At the remote

⁷⁰⁵ *Verizon Massachusetts Order*, ¶131.

⁷⁰⁶ Tr. p. 2555-2560 (*Turner*).

⁷⁰⁷ AT&T/Covad Post Hearing Brief at p. 65 [*Citing the FCC’s UNE Remand Order* at ¶273, and note 543].

⁷⁰⁸ Tr. p. 2555 (*Turner*).

⁷⁰⁹ AT&T/Covad Post Hearing Brief at p. 66 [*Citing Line Sharing Order*, ¶5].

⁷¹⁰ *Id.* [*Citing Line Sharing Reconsideration Order*, ¶10].

terminal, the fiber is connected with the copper loop to the customer's premise. The next generation aspect of NGDLC arises from the availability of different plug in cards which allow the telecommunications carrier to provide voice service only, advanced service only, or combined voice and advanced services.⁷¹¹ AT&T notes that the FCC has recognized that it would be inconsistent with the goals of the Act "to permit the increased deployment of fiber-based networks by incumbent LECs to unduly inhibit the competitive provision of XDSL services."⁷¹²

AT&T notes that in its *Line Sharing Reconsideration Order*, the FCC expressed concern that a CLEC might attempt to provide line-shared XDSL services by collocating a digital subscriber line access multiplexer (DSLAM) at the central office only to have the ILEC migrate its customers to fiber-fed facilities at a remote terminal.⁷¹³ The CLEC would then be forced to collocate another DSLAM at the remote terminal in order to continue providing line shared services to these customers. To alleviate this concern, the FCC requires the ILEC to provide the option of access to the high frequency portion of the loop at either the central office or the remote terminal, even when the customer is served by NGDLC facilities.

AT&T asserts that BellSouth does not offer full unbundled access to the local loop because it does not offer any feasible means of line sharing in situations where it has deployed fiber-fed Digital Loop Carrier (DLC) at remote terminals. As a result, AT&T contends that CLECs face three choices: (1) utilize traditional copper loops to deliver inferior service quality, assuming such copper loops are available; (2) pursue cost prohibitive remote terminal collocation; or (3) forego competition for the customers served by BellSouth's expanding fiber-fed network. AT&T maintains that none of these three choices provide a viable avenue for CLECs to compete successfully in the advanced services marketplace.⁷¹⁴

AT&T contends that without a feasible means of access to the high frequency portion of the loop through line sharing at the remote terminal, BellSouth cannot meet the unbundling requirements set forth by the FCC. AT&T contends that CLECs are entitled to access to unbundled loop elements which consist of "all features, functions,

⁷¹¹ Tr. p. 2556 (*Turner*).

⁷¹² *Id.* at p. 67 [*Citing Line Sharing Reconsideration Order*, ¶13].

⁷¹³ *Id.* [*Citing Line Sharing Reconsideration Order*, ¶11].

⁷¹⁴ Tr. pp. 2556-2557, 2574-2575 (*Turner*).

and capabilities that provide transmission functionality between a customer's premises and the central office, regardless of the technologies used to provide, or the services offered over, such facilities."⁷¹⁵ AT&T accordingly maintains that BellSouth should be required to implement the FCC's mandate and provide unbundled loop access at its remote terminals before gaining authority to enter the interLATA market in Alabama.⁷¹⁶

AT&T and Covad further contend that BellSouth provisions line splitting in a discriminatory manner. AT&T and Covad point out that the FCC has recognized that in order to compete effectively with BellSouth for both voice and data services, UNE-P CLECs must be able to offer bundled services. Because the availability of line splitting will enhance competition in the advanced services market, ILECs must allow CLECs to "offer both voice and data service over a single unbundled loop." The FCC has stated that ILECs have a "current obligation to provide [CLECs] with the ability to engage in line splitting arrangements." AT&T and Covad nonetheless contend that BellSouth continues to resist making line splitting generally available.⁷¹⁷

AT&T and Covad contend that BellSouth impairs the ability of CLECs to provide line splitting because BellSouth refuses to provide the necessary splitter to new line splitting customers, unless the customer was a previous line sharing customer and BellSouth was previously providing the splitter. Indeed, AT&T and Covad represent that BellSouth admits that it could provide the splitter but does not.⁷¹⁸ AT&T and Covad assert that BellSouth's policy inhibits CLEC entry into the market for advanced services and demonstrates BellSouth's efforts to restrain CLEC competition in advanced services. AT&T and Covad accordingly contend that BellSouth has failed to show that it provides nondiscriminatory access to loops in accordance with Checklist Item 4.⁷¹⁹

AT&T and Covad further contend that BellSouth inhibits competition by discontinuing advanced services to customers who switch voice service to a CLEC UNE service. More particularly, AT&T and Covad note that if a BellSouth XDSL customer switches its voice service to a CLEC that uses UNE loop (UNE-L or UNE-P), BellSouth terminates that customer's XDSL service - not because of technical limitations, but

⁷¹⁵ AT&T/Covad Post Hearing Brief p. 68 [*Citing* 47 U.S.C. §151(29); 47 U.S.C. §251(c)(3); and the *UNE Remand Order*, ¶175].

⁷¹⁶ *Id.* at p. 68.

⁷¹⁷ *Id.* at p. 69 [*Citing* the FCC's *Line Sharing Reconsideration Order*, ¶¶17-23].

⁷¹⁸ Tr. p. 472 (*Williams*).

⁷¹⁹ AT&T/Covad Post Hearing Brief at p. 69.

because BellSouth has determined as a matter of policy that it will provide its advanced services only to customers who use BellSouth's retail voice service or a resold BellSouth service.⁷²⁰ AT&T and Covad contend that these policy decisions inhibit competition in the voice markets by making it difficult for UNE-P CLECs to compete for the voice service of Alabama customers who are currently served by BellSouth for voice and data.

In order to protect competition for voice services in Alabama, AT&T and Covad assert that the Commission should require BellSouth to discontinue the above-described policy which AT&T contends is anti-competitive. AT&T and Covad further point out that BellSouth relies on the absence of a legal obligation to provide data service on a UNE loop as justification for its anti-competitive policy.⁷²¹

(d) The Position of ITC DeltaCom

Much like AT&T, ITC DeltaCom contends that BellSouth's refusal to provide UNE-P line splitting is discriminatory, results in an anti-competitive tying of products and renders BellSouth in noncompliance with Checklist Item 4. In particular, ITC DeltaCom supports AT&T witness Mr. Turner's contention that "BellSouth's technical capability to provide line splitters for CLEC use in the UNE-P environment is shown by the fact that although BellSouth claims it does not have a legal obligation to provide a line splitter when it engages in line sharing with another CLEC, it is willing to do so, and in fact, has done so. However, when a CLEC wants to provide line splitting with UNE-P so that a customer can obtain voice and advanced services over the same line, BellSouth uses its lack of legal obligation to refuse to provide CLECs with a splitter to serve new customers." ⁷²² Thus, BellSouth is willing to provide the splitter to CLECs when BellSouth continues to provide the customer with voice service. However, for a new customer, if BellSouth is not providing the voice service, then BellSouth refuses to provide the splitter and requires the CLEC to provide one.⁷²³

ITC DeltaCom maintains that the aforementioned position of BellSouth is obviously not an issue of technical capability, but rather a case of blatant discrimination

⁷²⁰ Tr. p. 49 (*Ruscilli*); and 489 (*Williams*).

⁷²¹ AT&T/Covad Post Hearing Brief at p. 70 [*Citing* Tr. p. 499 (*Williams*)].

⁷²² ITC DeltaCom Post Hearing Brief at p. 21 [*Citing* Tr. pp. 2565-2567 (*Turner*)].

⁷²³ *Id.*

in violation of §251(c)(3) of the Act.⁷²⁴ ITC DeltaCom further alleges that BellSouth's position is an attempt to tie its products together such that a consumer does not have the freedom of choice to keep BellSouth for DSL service but select a CLEC for voice services.

(e) The Position of KMC

KMC contends that BellSouth is not only failing to provide loops in accordance with the Act, but is also affirmatively blocking CLEC access to loops. KMC contends that BellSouth's failure to meet this Checklist Item is confirmed by its own performance data and the testimony in this proceeding. KMC alleges that BellSouth's problems include missed installations, excessive numbers of CLEC orders being placed in jeopardy status, poor provisioning quality, and anti-competitive customer freezes.

KMC maintains that BellSouth routinely fails to meet installation dates that it establishes through its supposedly firm order confirmations.⁷²⁵ KMC alleges that there is, in fact, not much that is truly firm about the install dates set forth in BellSouth's orders given the fact that BellSouth fails to check reliable records prior to issuing firm order confirmations and readily admits to same.⁷²⁶ As a direct result of this shortcoming, KMC represents that technicians frequently find a record discrepancy or defective facility when they arrive to install service – either of which will in all likelihood prevent an order from being provisioned as scheduled.⁷²⁷

KMC asserts that despite its awareness that the install dates it provides in order confirmations is often meaningless, BellSouth still fails to verify that it has actual working circuits available to complete the order until the install date arrives. KMC disputes BellSouth witness Ainsworth's claim that BellSouth discovers the lack of facilities within 24-48 hours after issuing an FOC. KMC represents that the actual discovery and notification that a facility assigned to a competitor is unavailable is, in KMC's real world experience, frequently made at the last minute.⁷²⁸

Although BellSouth attempts to justify its failure to meet its install commitments by claiming that its retail customers suffer the same fate, KMC notes that there is no equivalent to a FOC on the retail side. Further, KMC maintains that BellSouth's own

⁷²⁴ *Id.* at pp. 21-22.

⁷²⁵ Tr. p. 3679 (*Weber*).

⁷²⁶ KMC Post Hearing Brief at p. 10 [*Citing* Tr. p. 1293 (*Ainsworth*)].

⁷²⁷ Tr. p. 3679 (*Weber*).

performance data does not back up the claim that it is providing nondiscriminatory access to CLECs and retail customers. In particular, KMC notes that the number of jeopardy notices for high capacity loop orders that BellSouth issued to CLECs in July, for example, was roughly twice the number of notices given to retail customers.⁷²⁹ KMC thus maintains that BellSouth has presented no proof that it is complying with the checklist standards that require nondiscriminatory access to loops while KMC's witnesses have presented first hand testimony that demonstrates that BellSouth is not meeting its obligations under Checklist Item 4.⁷³⁰

KMC contends that the effect of BellSouth's noncompliance and the result of missed installs is significant. Since the order confirmation is the only indication that competitors receive regarding when BellSouth plans to install loops, the competitors must rely upon the FOC in notifying their customers and scheduling their workforce.⁷³¹ KMC contends, however, that BellSouth fails to provide adequate notice when it knows it will miss the confirmed install date. KMC asserts that the result is a tremendous waste of resources and customer inconvenience which results in the loss of faith in the CLEC and the efficiency of competitive telephone service.⁷³²

KMC further maintains that when BellSouth finally provisions loops, it frequently does so poorly. To that end, KMC represents that BellSouth's performance data reveals that CLECs suffer more troubles within 30 days of the installation than BellSouth retail in many different loop categories. In the 2-wire analog loop design category, for example, KMC asserts that over 15% of the CLEC loop installs had trouble within 30 days while only 7% of the analogous retail orders did.⁷³³

In the digital loop category, KMC alleges that BellSouth's performance was so poor that even it cannot claim to be in compliance. For loops below DS-1 level in June, 2001, KMC notes that the post installation trouble rate for CLEC circuits was 9.5% while BellSouth experienced zero problems on almost twice the number of retail orders.⁷³⁴ For high capacity loops, KMC points out that CLEC customers suffered from troubles on over 5% of their lines within 30 days while BellSouth retail customers again had zero

⁷²⁸ KMC Post Hearing Brief at p. 11 [*Citing* Tr. p. 1294-1295 (*Ainsworth*)].

⁷²⁹ *Id.* [*Citing July Summary Metric* B.2.5.19].

⁷³⁰ *Id.*

⁷³¹ Tr. p. 3679 (*Weber*).

⁷³² *Id.*

⁷³³ KMC Post Hearing Brief at p. 12 [*Citing June Summary Metric* B.2.19.8.1.1].

troubles.⁷³⁵ Similarly in July, 2001 BellSouth customers ordering less than 10 loops below the DS-1 level experienced zero provisioning troubles while the CLEC's trouble rate was 4.42% on less than half the number of orders.⁷³⁶ Finally, KMC contends that BellSouth customers ordering less than 10 digital loops over DS-1 capacity were fortunate enough to again experience fewer troubles. CLECs on the other hand suffered a 20% trouble rate on almost the same number of orders.⁷³⁷

KMC maintains that the above-described problems demonstrate a systematic lack of parity. KMC further maintains that the problem is only exasperated by the fact that digital loops are critical to CLEC market entry as verified by the high CLEC volumes. In June, 2001 for example, overall CLEC digital loop volumes on orders over 10 circuits were more than four times higher than the comparable BellSouth retail volumes. KMC alleges that the BellSouth testimony and data confirms what the KMC witnesses have asserted: that BellSouth's performance in this critical area must improve before it can be deemed to be in compliance.⁷³⁸

KMC further alleges that BellSouth experiences excessive repeat troubles for analog loops. In June, 2001 for example, KMC notes that BellSouth's retail Repeat Trouble Percent for analog loops averaged over 22% while CLECs experienced almost a 50% greater repeat trouble rate.⁷³⁹ KMC contends that BellSouth confirmed its problems with repeat troubles through its witness Ainsworth who testified that BellSouth's "chronic group" has as its purpose to correct repeat troubles. Significantly, KMC notes that Mr. Ainsworth admitted that he did not anticipate that the workload of the chronic group will ever be diminished.⁷⁴⁰

KMC further asserts that with regard to Repair Appointments for other design/non-dispatch orders, BellSouth's performance is equally troubling. Once again, KMC maintains that BellSouth provided itself with far superior service missing June 2001 CLEC Repair Appointments four times as often as for its own retail customers.⁷⁴¹

KMC represents that BellSouth again discriminated against CLECs in July 2001 for both XDSL/dispatch and UNE ISDN/non-dispatch CLEC repair appointments. KMC

⁷³⁴ *Id.*

⁷³⁵ *Id.* [Citing June Summary Metric B.2.19.19.1.1].

⁷³⁶ *Id.* at p. 13 [Citing July Summary Metric B.2.19.18.1.1].

⁷³⁷ *Id.* [Citing July Summary Metric B.2.19.19.1.1].

⁷³⁸ *Id.*

⁷³⁹ *Id.* at p. 13 [Citing June Summary Metric B.3.4.8.1].

asserts that BellSouth missed Repair Appointments nearly 15% of the time for both categories.⁷⁴²

KMC further alleges that BellSouth's poor performance is exasperated by the fact that BellSouth is categorically denying access to customers through intentionally discriminatory DSL assignment. KMC maintains that it and other BellSouth competitors attempt to serve multi-line customers by purchasing loops from BellSouth and then connecting those loops to their own fiber networks. Multi-line customers in turn almost always have a feature called hunting that permits calls to roll over to a spare line if the primary line is busy. KMC contends that BellSouth is using a customer's decision to obtain DSL service to physically foreclose competitors' ability to provide service to that customer. KMC maintains that BellSouth is illegally shielding such customers in two distinct ways.⁷⁴³

According to KMC, the first discriminatory method involves BellSouth placing DSL service on its customers' primary lines which blocks access to almost half a million customers. Since BellSouth has made a "business decision" to not offer its DSL service on UNE loops, assignment of the DSL to the primary line prevents CLECs from obtaining the loop and serving that end user. Without access to the primary line, the remainder of the lines on a customer's account cannot be transferred; even if they could, the secondary or rollover lines are useless without the primary line to which all incoming calls are initially directed.⁷⁴⁴ While BellSouth claims that it has a policy to install a DSL service on whichever line the end user requests, its witnesses do not know if that policy is in writing or what script its service representatives are supposed to follow. Most significantly, KMC asserts that BellSouth does not explain to customers that they will be prevented from enjoying the benefits of competition if DSL was placed on their primary line.⁷⁴⁵

According to KMC, BellSouth's second discriminatory tactic involves transferring back to itself a customer's primary line if an existing KMC customer requests DSL service from BellSouth. KMC argues that once BellSouth effectuates such completely

⁷⁴⁰ *Id.* at pp. 13-14 [*Citing* Tr. pp. 1304-1307 (*Ainsworth*)].

⁷⁴¹ *Id.* at pp. 13-14 [*Citing* *June Summary Metric* B.3.1.10.2].

⁷⁴² *Id.* [*Citing* *July Summary Metric* B.3.1.5.1 and B.3.1.6.2].

⁷⁴³ KMC Post Hearing Brief at p. 14.

⁷⁴⁴ *Id.*

⁷⁴⁵ *Id.* at pp. 14-15.

unnecessary primary line transfers, CLECs are left with nothing but useless, secondary lines.⁷⁴⁶

KMC asserts that the aforementioned BellSouth practices virtually eliminate customer choices and severely hinder market entry. Since there is no justification for assignment of DSL to the primary line, KMC contends that BellSouth should be specifically prohibited from continuing that practice.⁷⁴⁷

KMC asserts that the Commission must clearly articulate a policy that will prevent BellSouth from using its new found dominance of the DSL market to quash the competition in the voice market. In the absence of a specific, informed, and memorialized customer request, KMC maintains that BellSouth must be prohibited from assigning DSL service to the primary line of multi-line customers, and from transferring back to itself a CLEC customer's primary line in response to a request for DSL service from the customer. KMC asserts that this policy is absolutely fair to BellSouth as it will in no way limit BellSouth's ability to market its DSL service. KMC asserts that such a policy will, however, prevent BellSouth from using the DSL service to block CLEC access to voice customers in violation of this checklist item. KMC asserts that until BellSouth ceases this anti-competitive practice, it cannot be found to be in compliance with this checklist item.⁷⁴⁸

(f) The Position of Covad⁷⁴⁹

Covad asserts that its business plan depends upon BellSouth's loop delivery performance as well as BellSouth's provision of high quality preordering, ordering, repair, and maintenance services. Covad contends that the best way to assess BellSouth's performance in the aforementioned areas is via the Monthly State Summary that BellSouth submits to the Commission.

In its assessment of BellSouth's performance, Covad focuses particularly on the Order Completion Interval or metric P-4 in the BellSouth Monthly State Summary. This metric measures the interval from BellSouth's issuance of a Firm Order Confirmation to Covad until BellSouth completes the service order. According to Covad, BellSouth reported in its Monthly State Summary for March 2001 that it installed 32 CLEC XDSL

⁷⁴⁶ *Id.* at p. 15.

⁷⁴⁷ *Id.*

⁷⁴⁸ KMC Post Hearing Brief at pp. 15-16.

orders in Alabama in 10.9 business days, but installed 641 orders for its own ADSL on the retail side in 4.28 days. Covad, therefore, asserts that BellSouth's operations are much more efficient at installing larger volumes of their own retail ADSL lines than they are at installing even a small number of UNE XDSL loops in Alabama. Covad contends that BellSouth's tendency to favor its own retail operations harms competition and is a matter that must be addressed prior to BellSouth's receipt of §271 approval.⁷⁵⁰

With regard to BellSouth's provisioning of line shared loops, Covad notes that its interconnection agreement with BellSouth for line sharing requires BellSouth to provision loops to Covad in three business days from the submission of a complete and correct local service request. Covad maintains, however, that the data submitted in BellSouth's Monthly State Summary for March reflects that BellSouth provisions line shared loops, on the average, in 5 business days after receipt of the FOC. Although BellSouth's data is not disaggregated, Covad alleges that most, if not all, of the orders reflected on BellSouth's Monthly State Summary with regard to the provisioning of line shared loops are loops for Covad. Covad thus asserts that BellSouth should be delivering those loops in 3 business days from the receipt of a complete LSR as opposed to 5 business days on the average.⁷⁵¹

Covad further emphasizes the importance of BellSouth's performance under metric P-10, Total Service Order Cycle Time. Covad notes that for stand alone XDSL loops, this metric combines the time for Service Inquiry Interval (SI), FOC timeliness, Average Completion Interval, and Average Completion Notice Interval. Essentially this metric measures the entire time from when BellSouth first receives an order for an XDSL loop until it completes the order by sending a completion notice. Covad asserts that this interval is particularly important to customers because it measures how long it takes to get orders installed. Covad points out that BellSouth's Monthly State Summary from March 2001 demonstrates that BellSouth took an average of 16.33 business days to get CLEC ISDN orders in Alabama all the way through the various BellSouth systems. For XDSL loops, Covad asserts that the wait for customers was 2 full weeks on average. In either case, Covad contends that the aforementioned waits are

⁷⁴⁹ The issues discussed herein are raised independently by Covad at hearing, separate and apart from the Joint Post Hearing Brief Covad submitted with AT&T.

⁷⁵⁰ Tr. p. 3726 (*Davis*).

⁷⁵¹ Tr. p. 3727 (*Davis*).

excessive. Covad stressed that it and other CLECs depend on offering better service and better products in order to compete against an entrenched monopolist like BellSouth.⁷⁵²

Covad also emphasizes the importance of the metric P-2, Percentage Orders in Jeopardy - - Non-Mechanized which measures the percentage of orders given jeopardy notices for facility delays out of the number of orders in the month. Covad asserts that this metric is important to Covad because it has experienced ongoing problems resolving facilities issues in a timely manner. By measuring the percentage of orders that are given jeopardy notices, Covad asserts that the Commission can assess the percentage of orders that are delayed for facility reasons. Covad asserts that a comparison of the CLEC aggregate numbers to the comparable BellSouth numbers will help identify whether BellSouth somehow “ finds” more facilities for its own retail customers than it “finds” for Covad and other CLECs.⁷⁵³ Covad notes, however, that BellSouth reported no retail information for this metric rendering a comparison impossible. Nonetheless, Covad points out that BellSouth’s report indicates that 13% of all CLEC orders for XDSL loops were held in jeopardy status for facilities. Likewise, BellSouth reported that 54% of CLEC orders for ISDN (which Covad uses for its IDSL service) were held in jeopardy status.⁷⁵⁴ Covad asserts that the fact that 13% of XDSL loop orders and 54% of ISDN loop orders were held for facilities based jeopardies raises a question of whether BellSouth is treating CLECs in a nondiscriminatory fashion.⁷⁵⁵

Covad further asserts that loop quality is an essential aspect of nondiscriminatory loop provisioning. In order to assess loop quality, Covad looks to the P-9 metric, Percent Provisioning Troubles Within 30 Days. This metric generally assesses the quality of the installation of an XDSL loop. Covad notes that the FCC in its *SWBT Texas Order* found two important reasons why the measurement of trouble tickets within 30 days is important for determining checklist compliance. First, trouble reports within 30 days are “indicative of the quality of network components supplied by the

⁷⁵² Tr. p. 3728 (*Davis*).

⁷⁵³ Tr. p. 3728-3729 (*Davis*).

⁷⁵⁴ Tr. p. 3729 [*Citing BellSouth Monthly State Summary for March*].

⁷⁵⁵ *Id.*

incumbent.”⁷⁵⁶ Second, the FCC concluded that advanced services customers that experience substantial troubles in the period following installation of an XDSL capable loop are likely to remain with a competing carrier.⁷⁵⁷

According to Covad, BellSouth reported that 1.36% of CLEC stand alone XDSL loops had trouble within 30 days of installation, while BellSouth reported that its retail ADSL customers experienced 0% troubles within 30 days. Similarly, for ISDN loops, Covad asserts that BellSouth reported 0% troubles within 30 days while CLECs experienced 1.79% troubles. Covad thus contends that the CLECs experience significantly more problems with the quality of BellSouth’s network elements than do BellSouth’s own retail customers.⁷⁵⁸

Covad also emphasizes the importance of assessing BellSouth’s metric P-3, Percent Missed on Installation Appointments. Covad asserts that missed installation appointments effect Covad in several ways. First, every missed appointment on an XDSL loop means that a Covad customer waited at home for a BellSouth technician that never came. Covad asserts that even though BellSouth reports that it missed 6.23% of its installation appointments for a retail ADSL as compared to 3.39% for the CLECs, this level of performance does not enable CLECs to compete successfully in Alabama.⁷⁵⁹ Covad also notes that the Percent Missed Installation Appointments metric specifically excludes end user or CLEC caused missed appointments and only measures missed appointments for which BellSouth was responsible.

With regard to BellSouth’s measurement of missed installation appointments, Covad asserts that BellSouth has an ongoing problem with the accuracy of its service order completions for line shared loops. Covad argues that BellSouth’s systems are designed to automatically complete a line shared order on a loop delivered due date - - the date BellSouth provides for completion of the order on the FOC. Thus, BellSouth’s systems may reflect that the line share order has been completed even when the actual cross connection work has not been done in the central office to provision a line shared loop. Covad thus maintains that the BellSouth systems may generate reports that the line shared order has been completed without any confirmation that the appropriate

⁷⁵⁶ *Id.* [Citing *SWBT Texas Order*, ¶[299].

⁷⁵⁷ *Id.*

⁷⁵⁸ Tr. p. 3730 (*Davis*) [Citing *BellSouth Monthly State Summary for March 2001*].

⁷⁵⁹ *Id.*

cross connection work has been done in the appropriate central office. Covad asserts that this “auto complete” aspect of line sharing makes data generated from missed installation appointments for line shared loops from BellSouth highly questionable.⁷⁶⁰

With regard to Missed Repair Appointments or metric M & R-1, Covad notes that BellSouth’s Monthly State Summary for March 2001 shows that BellSouth missed 9.09% of CLEC appointments compared to missing only 1.48% of its own. For XDSL loops with trouble tickets not requiring a dispatch, BellSouth missed an astonishing 25% of its repair appointments for CLECs compared to missing only 1.48% of its own. Covad contends that this represents a huge discrepancy in how CLECs are treated in Alabama. Covad thus contends that BellSouth provides exponentially poorer service to CLECs.⁷⁶¹

Covad also stresses the importance of the metric M & R-2, Customer Trouble Report Rate which measures the percentage of CLEC orders experiencing any trouble during the reporting month. According to Covad, this metric signifies BellSouth’s overall performance to CLECs in Alabama. For line shared loops provisioned to CLECs, Covad asserts that BellSouth must provide performance analogous to its performance for ADSL provided to retail. Covad points out, however, that BellSouth’s Monthly State Summary for March 2001 demonstrates that for non-dispatched line sharing orders, the CLEC customer trouble rate is eight times higher than BellSouth’s retail trouble report rate - - 8.51% for CLECs but only 1.58% for BellSouth. Covad asserts that this means that CLECs have troubles on line sharing lines eight times as often as BellSouth, making it very difficult for CLECs to provide high quality service to their customers. Covad asserts that BellSouth’s report on metric M & R-2 thus demonstrates a lack of parity performance for CLECs.⁷⁶²

In conclusion, Covad asserts that BellSouth’s performance in delivering loops continues to pose a significant obstacle to successful competition in Alabama. Covad urges the Commission to ensure that BellSouth has removed those obstacles to competition prior to granting BellSouth’s request for § 271 approval.⁷⁶³

(g) BellSouth’s Rebuttal

⁷⁶⁰ Tr. p. 3731-3732 (*Davis*).

⁷⁶¹ Tr. p. 3732 (*Davis*).

⁷⁶² Tr. p. 3732-3733 (*Davis*).

⁷⁶³ Tr. p. 3733 (*Davis*).

(i) Local Loops

BellSouth maintains that KMC's allegations concerning chronic outages and repeat troubles are unfounded. More particularly, BellSouth asserts that repeat troubles primarily result from intermittent problems that are not always present and thus do not allow for immediate identification and resolution. BellSouth contends that such problems can exist in BellSouth's network, the CLEC's network, or the customer's equipment. BellSouth asserts that when a CLEC submits trouble tickets without adequate testing to isolate the problem to BellSouth's network and to find the trouble condition, immediate resolution of the problem is unlikely. BellSouth further notes that when it completes repairs of outages affecting CLEC customers, it gives the CLECs the opportunity to do cooperative testing to ensure that the problem was adequately resolved. BellSouth thus contends that accurate testing by CLECs is the primary factor in successfully identifying and resolving intermittent problems.⁷⁶⁴

In addition, BellSouth notes that it has established a chronic problem resolution group in its CWINS center to work with CLECs to identify and resolve chronic troubles whether they are in the BellSouth network, the CLEC network, or in customer equipment. BellSouth notes that its monthly operational meetings with individual CLECs also allows it to investigate and resolve issues as they arise.⁷⁶⁵

(ii) Hot Cuts

With regard to the variety of issues raised by AT&T concerning BellSouth's hot cut procedures, BellSouth points out that AT&T and BellSouth executed a Memorandum of Understanding (MOU) on April 16, 2001 setting forth a mutually agreeable hot cut provisioning process which is now used for all CLECs. BellSouth thus contends that AT&T's complaints about a hot cut process it negotiated does not warrant a finding of checklist noncompliance.⁷⁶⁶

BellSouth nonetheless addresses AT&T's specific complaints regarding hot cuts. More particularly, BellSouth contends that AT&T's complaint about a so called "operational disagreement" regarding IDLC and BellSouth's hot cut performance metrics is entirely hypothetical. BellSouth asserts that it has been, and still is, counting IDLC hot cuts as time specific if requested by the CLEC. BellSouth notes that this fact was

⁷⁶⁴ BellSouth Post Hearing Brief at pp. 89-90.

⁷⁶⁵ *Id.* at p. 90 [*Citing* Tr. pp. 1208-1209 (*Ainsworth*)].

conceded by AT&T witness Berger. BellSouth thus contends that AT&T has not identified conduct concerning this issue which warrants a finding of checklist noncompliance.⁷⁶⁷

With regard to the allegations of AT&T and KMC that BellSouth refuses to check the availability of connecting facility assignments (CFAs) prior to issuing a FOC, BellSouth attributes the CLEC complaints to their poor record keeping. BellSouth contends that when a CLEC orders a UNE such as an unbundled loop, it specifies the CFA to which BellSouth should connect the unbundled loop. The CFA extends the loop from BellSouth's distribution frame to the CLEC's collocation arrangement. According to BellSouth, CLECs submit LSRs for unbundled loops specifying CFAs that are already in use for other unbundled ports. BellSouth maintains that this problem should not occur because CLECs can check the status of the CFAs before submitting their LSRs to BellSouth, thus eliminating problems with their erroneous CFA assignments on their LSRs.⁷⁶⁸

Nonetheless, BellSouth notes that it has agreed to provide access to CFA information within LFACS in a future update to that mechanized system to resolve the aforementioned problem. Until that update is completed, BellSouth notes that it will continue to provide a report that is updated at least three times a week showing the status of each CFA. BellSouth contends that given the ability of CLECs to check the status of CFAs before submitting LSRs to BellSouth, this interim approach satisfactorily addresses the CLEC concerns raised.⁷⁶⁹

BellSouth further disputes AT&T's claims that manual hot cut orders are more prone to delays and error. BellSouth contends that there is no requirement that hot cut orders be fully mechanized and that the applicable standard is whether hot cut conversions are provided "in a manner that offers an efficient competitor a meaningful opportunity to compete." BellSouth contends that its performance data demonstrates that it is meeting this requirement.⁷⁷⁰ BellSouth further contends that it has met the explicit requirements delineated by the FCC for hot cuts and has demonstrated that it

⁷⁶⁶ *Id.* at p. 91 [*Citing* Tr. pp. 1470-1474 (*Milner*)].

⁷⁶⁷ *Id.* [*Citing* Tr. pp. 1476-1477 (*Milner*); and Tr. p. 3222 (*Berger*)].

⁷⁶⁸ *Id.* at pp. 91-92 [*Citing* Tr. p. 1475 (*Milner*)].

⁷⁶⁹ *Id.* [*Citing* Tr. pp. 727-729 (*Pate*)].

⁷⁷⁰ *Id.* [*Citing* SWBT Texas Order, 18484-18495].

“provisions hot cuts in sufficient quantities, at an acceptable level of quality, and with a minimum of service disruption.”⁷⁷¹

(iii) Access to XDSL Capable-Loops

With regard to Covad’s arguments that the Georgia third party test does not adequately demonstrate parity for pre-ordering, ordering, and provisioning of XDSL, BellSouth argues that its commercial data indeed demonstrate compliance with Checklist Item 4. Moreover, BellSouth contends that KPMG conducted a thorough review of BellSouth’s XDSL services which extended to the processes and procedures for pre-ordering, ordering and provisioning; workflow definitions, work force scheduling, facility administration, service activation, testing acceptance, exception handling, and completion notices. BellSouth notes that KPMG concluded that it satisfied all of the XDSL evaluation criteria.⁷⁷²

With regard to Covad’s criticisms about its inability to order DSL electronically, BellSouth notes that it has held numerous meetings with CLECs, including Covad, to identify DSL capable loops that CLECs initially would be able to order electronically. BellSouth contends that electronic ordering for DSL/UDC loop was not included in the XDSL ordering initially made available because neither Covad nor any other CLEC had requested such functionality. BellSouth thus argues that Covad’s request would be best handled through the Change Control Process.⁷⁷³

In response to Covad’s expressed concerns that a number of jeopardy notices reported by BellSouth indicates provisioning inadequacy, BellSouth contends that Covad misunderstands the meaning of “percent orders in jeopardy” and “jeopardy notice.” BellSouth notes that a jeopardy notice merely indicates that BellSouth has identified a situation that could affect the timeliness of completing an order, but such notices do not necessarily mean that BellSouth will in fact miss the installation date. BellSouth contends that its performance data demonstrating that it met the Missed Installation Appointment criteria for every XDSL submetric for which there was data for

⁷⁷¹ *Id.* at p. 93 [*Citing Bell Atlantic New York Order*, 4104-4105; *Verizon Massachusetts Order*, ¶159; *SWBT Kansas/Oklahoma Order*, ¶[201].

⁷⁷² *Id.* at p. 95 [*Citing Tr. pp. 696-700 (Pate)*].

⁷⁷³ *Id.* [*Citing Tr. p. 700 (Pate)*].

May through September 2001 demonstrates that it meets the due date for most orders.⁷⁷⁴

BellSouth also dismisses Covad's assertions that CLECs experience significantly more problems with the quality of BellSouth's ISDN and XDSL loops. While BellSouth concedes that it was not at parity for March 2001 in this area, it contends that over 98% of the installations it made were trouble free.⁷⁷⁵

In response to Covad's expressed concerns regarding BellSouth's maintenance and repair performance for XDSL and ISDN loops. BellSouth claims that due to statistically insignificant samples, BellSouth missed some metrics while nonetheless maintaining a high level of performance. BellSouth asserts that its overall level of performance demonstrated nondiscriminatory maintenance and repair of CLEC XDSL and ISDN loops.⁷⁷⁶

With regard to Covad's criticisms concerning BellSouth's documentation for ordering XDSL loops via LENS, BellSouth contends that detailed instructions for ordering XDSL loops through LENS are in the BellSouth Business Rules for Local Ordering, BellSouth's Unbundled ADSL/HDSL Compatible Loops Document, and the LENS User Guide. In addition to the aforementioned documents, BellSouth also notes that it offers training to CLECs and concludes that it has accurately documented XDSL ordering procedures.⁷⁷⁷

BellSouth further disputes Covad's allegations that BellSouth takes an excessive amount of time to provision ISDN lines. BellSouth maintains that there is data indicating that there is no material difference between BellSouth's ISDN order completion performance for CLECs and BellSouth's retail unit.⁷⁷⁸

BellSouth responds to Covad's criticism regarding its inability to offer IDSL over certain BellSouth ISDN loops by stating that its standard, basic rate ISDN service, although compliant with all ISDN technical standards, is unsuitable for IDSL. BellSouth notes that it developed its universal digital carrier (UDC) loop offering to accommodate

⁷⁷⁴ *Id.* at pp. 95-96 [*Citing* Tr. pp. 2192-2193 (*Varner*)].

⁷⁷⁵ *Id.* at p. 96 [*Citing* Tr. pp. 2189-2190 (*Varner*)].

⁷⁷⁶ *Id.* [*Citing* Tr. p. 2195 (*Varner*)].

⁷⁷⁷ *Id.* [*Citing* Tr. pp. 652-654 (*Pate*)].

⁷⁷⁸ *Id.* at p. 97 [*Citing* Tr. p. 2192 (*Varner*)].

Covad's request to provide IDSL. BellSouth maintains that its UDC loop offering addresses Covad's needs regarding IDSL service.⁷⁷⁹

With regard to counsel for US LEC's inquiries concerning BellSouth's unbundled loop modification (ULM) additive charge when applied to XDSL loops that do not require conditioning, BellSouth notes that it generally conditions loops 10 pair at a time and spreads the cost of conditioning among all CLECs ordering those loops.⁷⁸⁰ When a CLEC orders a single pair of XDSL loops that require conditioning, BellSouth only charges the CLEC the ULM additive charge for the pair of loops it ordered. To recover the cost of conditioning the other nine pairs of loops, BellSouth represents that it imposes the ULM additive charge on CLECs ordering those already conditioned loops. BellSouth asserts that this is an equitable means of distributing the cost of conditioning loops among those benefiting from that conditioning.⁷⁸¹

(iv) Line Sharing

BellSouth disputes Covad's criticism of its Order Completion performance for line shared loops. BellSouth notes that performance data for March 2001 shows that BellSouth provisioned line sharing more quickly to CLECs than to BellSouth's retail units. For dispatch orders, BellSouth points out that it met the Order Completion Interval ("OCI") measure for every month with data. For non-dispatch order, BellSouth notes that it met the OCI three out of five months. BellSouth maintains that the aforementioned performance data demonstrate that it is providing nondiscriminatory access in the area of order completion for line shared loops.⁷⁸²

In response to Covad's further claim that BellSouth fails to provide accurate Service Order Completion reports on line sharing orders, BellSouth notes that effective April 28, 2001, it began making the completion status for both the billing and the provisioning of line sharing UNE orders available to CLECs via the CLEC Service Order Tracking System ("CSOTS"). BellSouth maintains that it continues to provide the daily COSMOS/SWITCH CFA report as a separate informational tool. BellSouth contends that the aforementioned information is sufficient to meet Covad's needs.⁷⁸³

⁷⁷⁹ *Id.* at p. 97 [Citing Tr. p. 5639-5643 (*Latham*)].

⁷⁸⁰ Tr. pp. 3090-3096 (*Latham*).

⁷⁸¹ BellSouth Post Hearing Brief at p. 97 [Citing Tr. p. 390-396 (*Latham*)].

⁷⁸² *Id.* at p. 99 [Citing Tr. p. 2191 (*Varner*)].

⁷⁸³ *Id.* [Citing Tr. p. 729-732 (*Pate*)].

BellSouth further disputes Covad's assertions that BellSouth's Missed Installation Appointment measurement improperly excludes end user or CLEC caused missed appointments. BellSouth argues that the FCC has concluded that a BOC need only report the missed installation appointments it causes. BellSouth thus contends that its measurements meet the requirements of the FCC.⁷⁸⁴

With regard to AT&T's allegations that BellSouth does not comply with the FCC's *Line Sharing Reconsideration Order* because CLECs are not offered an integrated splitter Digital Subscriber Line Access Multiplier (DSLAM) line card at DSLAM-capable BellSouth remote terminals, BellSouth argues that the FCC does not require an ILEC to allow a CLEC to collocate its line cards in the ILEC's Digital Loop Carrier (DLC). BellSouth points out that Verizon did not allow such arrangements in Massachusetts, yet its 271 application was approved by the FCC. Moreover, BellSouth asserts that the FCC is explicitly considering this issue in its *Advance Services* docket.⁷⁸⁵ BellSouth further notes that AT&T witness Turner concedes that the FCC does not currently require BellSouth to allow CLECs to collocate line cards in DSLAMS. BellSouth thus urges the Commission to also find that there is no current obligation for BellSouth to do so.⁷⁸⁶

BellSouth asserts that AT&T is really seeking to require BellSouth to provide unbundled packet switching despite the FCC's refusal to impose such a duty except in limited circumstances which do not apply in Alabama. BellSouth notes that the FCC concluded with regard to the issue of unbundling packet switching that "regulatory restraint...may be the most prudent course of action in order to further the Act's goal with encouraging facilities-based investment and innovation."⁷⁸⁷ BellSouth asserts that the FCC has thus far declined to require ILECs to unbundle packet switching out of concern that such a requirement would impede competition and stifle innovation.⁷⁸⁸ BellSouth thus concludes that it is not obligated to provide unbundled packet switching to demonstrate compliance with Checklist Item 4.

(v) Line Splitting

⁷⁸⁴ *Id.* [Citing Tr. p. 2193-2194 (Varner)].

⁷⁸⁵ *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Further Notice of proposed rulemaking, 16 FCC Rcd. 2101, 2109 (2001) (Advanced Services Order).

⁷⁸⁶ BellSouth Post Hearing Brief at pp. 99-100 [Citing Tr. p. 2650 (Turner)].

⁷⁸⁷ *UNE Remand Order*, 3840.

⁷⁸⁸ *Id.*, 3839-3840.

In response to AT&T and Covad's allegations that BellSouth does not treat a "UNE-P" used with line splitting in the same manner as it treats a UNE-P used for voice service, BellSouth asserts that its conduct is consistent with FCC requirements. More particularly, BellSouth notes that the FCC has held that "if a competing carrier is providing voice service using the UNE-P, it can order an unbundled XDSL-capable loop terminated to a collocated splitter and DSLAM equipment and unbundled switching combined with shared transport, to replace its existing UNE-platform arrangement with a configuration that allows provisioning of both data and voice services."⁷⁸⁹ BellSouth thus contends that the FCC has recognized that once the loop and port are used to provide line splitting as opposed to a simple voice arrangement, the UNE-P no longer exists because the arrangements are fundamentally different.⁷⁹⁰

BellSouth also disputes the AT&T and Covad assertion that BOCs should provide splitters in line splitting arrangements by noting that no BOC in any state for which §271 authority has been granted has owned splitters in line splitting arrangements. BellSouth in fact contends that the FCC has specifically rejected AT&T's contention that a BOC's policy of providing the splitter in a line sharing arrangement, but not in a line splitting arrangement, is somehow discriminatory and that there is an obligation on the part of the BOC to furnish the splitter to CLECs engaging in line splitting over UNE-P.⁷⁹¹

With regard to the criticism of AT&T and Covad concerning BellSouth's decision not to permit line splitting between BellSouth and CLECs providing voice services such that a CLEC voice customer cannot obtain BellSouth's DSL service, BellSouth contends that it is not required to provide DSL services on CLEC loops. BellSouth points out that the FCC has repeatedly rejected CLEC arguments on this point and concluded in its *Line Sharing Order* that "the obligation of an incumbent LEC to make the high frequency portion of the loop separately available is limited to those instances in which the incumbent LEC is providing, and continues to provide, voice services on the particular

⁷⁸⁹ *Advanced Services Order*, 2111; *Application of Verizon New York, Inc.*; *Verizon Long Distance*; *Verizon Enterprise Solutions*; *Verizon Global Networks, Inc.*; and *Verizon Select Services, Inc. for authorization to provide In-Region InterLATA services in Connecticut*, Memorandum, Opinion and Order, 16 FCC Rcd. 14147, ¶3 (2001) (*Verizon Connecticut Order*); *SWBT Kansas/Oklahoma Order*, ¶225.

⁷⁹⁰ BellSouth Post Hearing Brief at p. 101.

⁷⁹¹ *Id.* at p. 102 [*Citing* Tr. pp. 442-448 (*Williams*); and *SWBT Texas Order*, 18516].

loop to which the requesting carrier seeks access.”⁷⁹² Likewise, in the *Line Sharing Reconsideration Order*, BellSouth notes that the FCC expressly held that the *Line Sharing Order* does not require that an ILEC provide XDSL service when it is no longer the voice provider.⁷⁹³

BellSouth further contends that the FCC does not require ILECs to provide splitters on a “line at a time” basis as contended by AT&T’s witness Turner. Indeed, BellSouth notes that AT&T’s witness Turner conceded that there is no FCC requirement to provide splitters one port at a time.⁷⁹⁴ BellSouth contends that it has demonstrated that when it voluntarily provides the splitter, its equipment has either 8, 96, or 144 ports. BellSouth asserts that it allows CLECs to purchase a full 96 port splitter or 24 or 8 port increments. BellSouth represents that a requirement that it deploy an entire shelf of 96 or 144 ports when a CLEC seeks a single port would be inefficient and would increase the costs of CLECs. BellSouth further contends that such a decision would inequitably shift the risk of underutilization from the CLEC who requested the equipment to BellSouth.⁷⁹⁵

BellSouth further points out that the 8 port option is the result of a settlement between BellSouth and the Data Coalition (a CLEC conglomerate consisting of the major players in the DSL market) that was reached in the Georgia XDSL proceeding and was extended by BellSouth to a region-wide application. BellSouth asserts that the aforementioned settlement demonstrates that CLECs that actually plan to use line sharing and line splitting to provide local service are satisfied with 8 ports.⁷⁹⁶

BellSouth counters AT&T’s arguments that line splitter installations will always result in a disruption of service to customers by maintaining that wiring a loop to a splitter will always require a minimal disruption of service regardless of who owns the splitter. BellSouth contends that service disruptions can be avoided only in circumstances where there are no wiring changes required.⁷⁹⁷

(h) The Determination of the Commission

(i) Overview

⁷⁹² *Id.* at p. 103 [Citing Tr. pp. 452-454 (*Williams*); the FCC’s *Line Sharing Reconsideration Order*, 397-398 and the *SWBT Texas Order*, 18517-18518].

⁷⁹³ *Id.* [Citing *Line Sharing Reconsideration Order*, 397-398, *SWBT Texas Order*, 18517-18518; and *Verizon Pennsylvania Order*, Appendix C, ¶¶50-52].

⁷⁹⁴ *Id.* [Citing Tr. p. 2643 (*Turner*); and *SWBT Texas Order*, 18516].

⁷⁹⁵ *Id.*

BellSouth generally contends that its performance, and to some extent the results of the Georgia third party test, demonstrate that it is complying with the provisions of the Act in its provisioning of loops, particularly, 2-wire analog loops, xDSL loops, and loop/port combinations. BellSouth's claims in this regard are disputed by the CLEC Intervenor, however, we categorize and address below the major arguments raised by the CLECs.

(ii) BellSouth's Hot Cut Performance

BellSouth alleges that its hot cut performance has been acceptable as evidenced by the performance data it introduced which indicates that BellSouth failed to achieve only two Hot Cut submetrics over the five month period from May through September 2001. BellSouth's claims regarding acceptable hot cut provisioning are challenged, however, by AT&T and Covad.

AT&T and Covad contend that BellSouth's hot cut process is not sufficiently predictable or reliable. AT&T and Covad attribute many of the problems experienced with BellSouth's hot cut process to BellSouth's practice of electronically processing hot cut orders and assigning due dates without adequately checking connecting facility assignments ("CFAs") to ensure the availability of the facilities necessary to effectuate the hot cut. AT&T and Covad contend that hot cut delays frequently result due to last minute discoveries that the necessary facilities are indeed not available. AT&T and Covad contend that there will not be parity with regard to the hot cut process until BellSouth provides AT&T and other CLECs with access to the BellSouth Local Facility Assignment Control System (LFACS) database which BellSouth has access to.

KMC raises CFA issues with regard to BellSouth's loop provisioning process in general which mirror those of AT&T concerning BellSouth's hot cut process. Much like AT&T in its arguments concerning BellSouth's hot cut process, KMC contends that the last minute discovery of CFA issues in the provisioning of loops is unproductive for BellSouth, the CLEC, and perhaps most importantly, the impacted end user.

BellSouth asserts that poor record keeping by the CLECs results in many of the CFA difficulties that are encountered in the Hot Cut process and the loop provisioning

⁷⁹⁶ *Id.* at pp. 103-104 [Citing Tr. pp. 455-456 (*Williams*)].

process in general. BellSouth also disputes AT&T's claim regarding the necessity of LFACS access by the CLECs contending that the report BellSouth provides, and updates three times weekly detailing the status of each CFA, should be sufficient. BellSouth nonetheless notes that it has agreed to provide access to the CFA information within LFACS in a future update to that mechanized system.

Given the importance of loop provisioning in general, and particularly the hot cut process, it appears that BellSouth should provide CLECs with access to its mechanized LFACS database as soon as possible. We do not, however, find it necessary to condition our approval concerning this checklist item on the provision of LFACS access given BellSouth's demonstration of satisfactory hot cut performance. We note that the FCC also found BellSouth's hot cut performance satisfactory and rejected CLEC arguments concerning the appropriateness of BellSouth's hot cut performance metric.⁷⁹⁸ We accordingly conclude that BellSouth is providing hot cuts in a reasonable time interval, at an acceptable level of quality, and with minimal service disruptions and troubles.

(iii) Chronic Troubles

With regard to the loop provisioning and maintenance and repair issues raised by KMC and Covad, BellSouth contends that more accurate testing by CLECs is the primary factor in successfully identifying and resolving intermittent problems. BellSouth notes that it recently created a chronic problem resolution group whose purpose is to assist in the identification and resolution of chronic troubles of all origins.

Our investigation of KMC's allegations of repeat and/or chronic troubles centers on the BellSouth metric which appears most likely to capture BellSouth's performance in this area – Percent Repeat Troubles Within 30 Days. Our investigation of this metric reveals that for July 2001, BellSouth met all but one of the 15 submetrics for which there was CLEC data. In August 2001, BellSouth met all but one of the 16 submetrics for which there was CLEC data. Similarly, for September of 2001, BellSouth met 10 of the 11 submetrics for which there was CLEC data. Notably, BellSouth met the submetric for 2-Wire Analog Loops, Design/Dispatch, specifically cited by KMC as problematic for

⁷⁹⁷ *Id.* at p. 104 [Citing Tr. pp. 448-449 (*Williams*)].

⁷⁹⁸ Georgia/Louisiana Order ¶¶220-221.

each of the aforementioned months. It thus appears that BellSouth has, at a minimum, made progress towards resolving the chronic problems complained of by KMC. Given BellSouth's solid performance and the establishment of the chronic workgroup, it appears that BellSouth has satisfied the concerns raised by KMC, and to some extent Covad, concerning chronic troubles.

(iv) The General Quality of BellSouth's Loop Provisioning

With regard to the additional complaints lodged by KMC and Covad concerning BellSouth's loop provisioning and maintenance and repair in general, we concur with BellSouth's assertion that the CLECs seem to over emphasize the number of orders receiving jeopardy notices when the more appropriate concern is whether or not BellSouth missed the scheduled installations of these orders. Also of significance is the performance of the loops in question following their installation. We thus focus our investigation of the allegations of KMC and Covad on an analysis of the metrics for UNE Missed Installation Appointments, Percent Provisioning Troubles Within 30 days, Percent Repeat Troubles, and Missed Repair Appointments.

BellSouth achieved the Missed Installation Appointment and Percent Repeat Troubles Within 30 days metrics for July, August, and September 2001, for all 2-Wire Analog, UNE/ISDN, xDSL and Digital Loops where applicable. BellSouth also achieved all of the Percent Repeat Troubles Within 30 Days submetrics for July, August, and September for all 2-Wire Analog, UNE/ISDN and xDSL Loops with the exception of 2-Wire Analog Loops, Design/Nondispatched in September 2001. BellSouth also achieved the Missed Repair Appointment metric for July, August, and September 2001 for all 2-Wire Analog, UNE/ISDN, and xDSL Loops except that BellSouth did not achieve the submetric for UNE/ISDN Loops/Nondispatch, in September 2001.

For the Percent Provisioning Troubles Within 30 days metric, BellSouth's performance was not quite as solid. In July, BellSouth achieved said metric for all 2-Wire Analog, UNE, ISDN, XDSL, and Digital Loops, but did not meet the established criteria for UNE/ISDN Loops, Less Than Ten Circuits/Dispatch, Digital Loops below the DS1 level (Less Than Ten Circuits/Dispatch) and Digital Loops above the DS1 level (Less Than Ten Circuits/Dispatch). In August and September 2001, BellSouth achieved

all of the metrics for which there was CLEC data for 2-Wire Analog, UNE, xDSL, and Digital Loops except for Digital Loops above the DS1 Level (Less Than Ten Circuits/Dispatch). While there does appear to be some consistency with regard to BellSouth's failure to achieve the Percent Provisioning Troubles Within 30 days submetric for Digital Loops above the DS1 Level (Less Than Ten Circuits/Dispatch), the entirety of the results discussed above are not indicative of a systematic problem as alleged by KMC and to some extent by Covad. We, therefore, find BellSouth's performance to be satisfactory and nondiscriminatory.

(v) BellSouth's xDSL Provisioning

In order to address Covad's allegations that BellSouth favors its ADSL operations by provisioning UNE XDSL loops for CLECs more slowly, a review of the Unbundled Network Element Order Completion Interval metric for XDSL loops of all types was performed for the months of July, August, and September of 2001. BellSouth achieved all of the XDSL submetrics for which there was CLEC data during those months. In fact, BellSouth, on the average, installed CLEC XDSL orders in 5.05 days while taking an average of 5.78 days to install its own ADSL orders during the aforementioned months. This conclusion certainly undermines Covad's arguments of favoritism by BellSouth towards its own ADSL operations and demonstrate BellSouth's compliance with the nondiscrimination standard.

(vi) Line Shared Loops

In response to Covad's allegations that BellSouth has ongoing problems with the accuracy of its Service Order Completions for line shared loops, BellSouth notes that effective April 28, 2001, it began making the completion status for both the billing and provisioning of line sharing UNE orders available to CLECs via the CLEC Service Order Tracking System ("CSOTS") and continues to provide the daily COSMOS/SWITCH CFA report as a separate informational tool. It appears that the aforementioned information is sufficient to meet Covad's needs.

In response to Covad's complaints regarding excessive CLEC trouble report rates for nondispatch line sharing orders, an assessment of BellSouth's line sharing performance in general for the months of July, August, and September was undertaken.

Specifically, a review of BellSouth's Customer Trouble Report Rate metric for Nondispatch Line Sharing orders for the months of July, August, and September, 2001, as well as Dispatched orders of that same variety was conducted. BellSouth indeed failed to meet this submetric for Nondispatch Line Sharing orders for July and August. However, BellSouth explains that in July, there were only 12 troubles reported for the 275 CLEC lines in service for this submetric. All 12 reports were from the same CLEC with ten of those reports being eventually closed as "no trouble found." BellSouth also points out that both CLEC and BellSouth retail customers received over 90% trouble free service for this submetric in July. These explanations indicate that there is not a systemic problem concerning this submetric.

An analysis of the Order Completion Interval for the Line Sharing, More Than 6 Circuits/Nondispatch submetric for July, August, and September, 2001 reveals that BellSouth failed to achieve this submetric for July 2001. BellSouth largely attributes this shortcoming to the failure of CLECs to properly code orders for which installation intervals beyond the offered interval were requested. BellSouth anticipates that the proper coding of such orders and adjustments to the due date calculator will bring this submetric in line. Notably, BellSouth met the retail analog comparison for this submetric in August and September 2001. It, therefore, does not appear that there is a systemic problem regarding this submetric.

BellSouth also failed to achieve the Missed Installation Appointments submetric for Line Sharing, More Than 10 Circuits/Dispatch, for August 2001 when there were only five CLEC orders. BellSouth did, however, meet the retail analog comparison for this submetric in July and September 2001.

Another submetric BellSouth failed to achieve regarding line sharing concerns the submetric for Percent Provisioning Troubles Within 30 days for Less Than 10 Circuits/Nondispatch for July, 2001. There were four troubles reported for the 24 orders completed in July which caused BellSouth to miss the metric. BellSouth did, however, meet the retail analog comparison for this submetric in July and September 2001.

BellSouth also failed to meet the Percent Repeat Troubles Within 30 days for Line Sharing/Dispatch submetric for July 2001 based on only one trouble report. There

was no CLEC activity for the submetric in August 2001 and BellSouth met the retail analog comparison for the submetric in September 2001 indicating that there is no systemic problem.

BellSouth also failed to achieve the Percent Repeat Troubles Within 30 days/Line Sharing/Nondispatch submetric in August 2001 when there were seven repeat trouble reports out of 17 trouble reports. BellSouth did, however, meet the retail analog comparison for the submetric in July and September 2001 which is indicative of a satisfactory performance.

It is apparent from the above-discussed analysis of BellSouth's line sharing performance that although BellSouth failed to meet certain metrics for July through September 2001, there do not appear to be systemic problems which cause concern and preclude compliance with this checklist item. Further, Covad's allegation that pursuant to its interconnection agreement with BellSouth, BellSouth should be delivering line shared loops in three business days from the receipt of a complete LSR as opposed to the five business day interval that BellSouth was averaging at the time of the proceedings in this cause is not a 271 issue *per se*. Covad should instead pursue its arguments in this regard in accordance with the procedures established in its interconnection agreement with BellSouth.

(vii) BellSouth's Line Splitting Policies

Among the policy arguments raised by the CLECs concerning this checklist item is the contention that BellSouth fails to comply with the FCC's *Line Sharing Order* because it does not offer CLECs an integrated splitter, digital subscriber line access multiplier (DSLAM) line card at DSLAM capable BellSouth remote terminals. BellSouth correctly points out that the FCC does not specifically require ILECs to allow a CLEC to collocate its line cards in the ILECs digital loop carrier (DLC) at this time. Even AT&T witness Turner concedes this point.

Given the FCC's finding in its Georgia/Louisiana Order that BellSouth's refusal to provide CLECs with an integrated splitter DSLAM line card at DSLAM capable BellSouth remote terminals did not render it in noncompliance with this checklist item, it

appears that BellSouth's policy in this regard is not one that precludes 271 approval.⁷⁹⁹ It should be noted, however, that this issue will be the subject of further investigation in Alabama pursuant to proceedings that will be held in Docket 27821 in the near future.

AT&T, Covad, and ITC DeltaCom also challenge BellSouth's policy of providing a line splitter in line sharing situations, but refusing to do so in line splitting situations unless the customer in question was a previous line sharing customer and BellSouth was previously providing the splitter. The CLECs contend that this policy is discriminatory and effectively precludes line splitting via UNE-P. As AT&T, Covad, and ITC DeltaCom note, it is in fact BellSouth's policy to disconnect its advance services to customers who switch their voice service to a CLEC UNE service. According to AT&T, Covad, and ITC DeltaCom, this policy is not based on technical limitations, but on blatant discriminatory motives.

We note that BellSouth is correct in pointing out that the FCC held in its *Local Competition Order* that once the loop and port are used to provide line splitting as opposed to simple voice arrangements, the UNE-P no longer exists because the arrangements are fundamentally different. BellSouth also correctly notes that no BOC in any state for which 271 authority has been granted has owned the splitter in line splitting arrangements. BellSouth in fact contends that the FCC has specifically rejected the CLEC contention that a BOC's policy of providing the splitter in a line sharing arrangement but not doing so in a line splitting arrangement is somehow discriminatory. BellSouth further notes that the FCC specifically held in its *Line Sharing Reconsideration Order* that "the obligation of an incumbent LEC to make the high frequency portion of the loop separately available is limited to those instances in which the incumbent LEC is providing, and continues to provide, voice services on a particular loop to which the requesting carrier seeks access." Likewise, BellSouth notes that the FCC expressly held in the *Line Sharing Reconsideration Order* that ILECs are not required to provide XDSL service when they are no longer the voice provider.⁸⁰⁰

Despite vehemently arguing the foregoing points during the proceedings, BellSouth ultimately included in its revised SGAT of November 16, 2001, provisions

⁷⁹⁹ *Georgia/Louisiana Order* at ¶240.

⁸⁰⁰ *Line Sharing Reconsideration Order* at 397-398.

which indicate that in situations where end users are currently receiving voice service from a CLEC through a UNE-Platform (or “UNE-P”), such service may be converted to a line splitting arrangement by CLECs ordering line splitting service. In situations where a line sharing arrangement or UNE-P arrangement does not already exist, BellSouth will work cooperatively with CLECs to develop methods and procedures to develop a process whereby a voice CLEC and a data CLEC may provide services over the same loop. Under such process, BellSouth will deliver a loop and a port to the collocation space of either the voice CLEC or the data CLEC and will provide a splitter upon request of the CLEC.⁸⁰¹ The foregoing provisions in BellSouth’s revised SGAT conclusively remove any doubt regarding BellSouth’s compliance with this checklist item with respect to line splitting. It is noted, however, that other policy issues concerning line splitting will likely be considered in the context of future proceedings in Docket 27821.

(viii) KMC’s XDSL Discrimination Allegations

We now turn to an assessment of KMC’s allegation that BellSouth has a policy of placing DSL service on the primary lines of customers which unfairly prevents CLECs from obtaining such loops and serving end users because of BellSouth’s additional policy of refusing to offer its DSL service on UNE loops. Similarly, we address KMC’s allegation that BellSouth’s allegedly has a policy of transferring back to itself a customer’s primary line if an existing CLEC customer requests DSL service from BellSouth. KMC argues that both these policies preclude CLECs from obtaining loops and serving the end users in question because there are nothing but useless secondary lines available to competitors in such circumstances.

Had KMC conclusively established at hearing that the alleged policies of BellSouth are indeed in place without a legitimate business reason, we would be in a position to address KMC’s concerns. Since that is not the case however, we must conclude that there is insufficient evidence to find BellSouth noncompliant with Checklist Item 4 based on the above allegations raised by KMC. We do note, however, that the FCC held in its recent *Georgia/Louisiana Order* that ILECs are not required to provide

⁸⁰¹ See BellSouth’s Revised SGAT at Section 11(A)(9)(b).

DSL service over the leased facilities of CLECs and that BellSouth's policy in this regard was not discriminatory.⁸⁰²

(ix) Conclusion

In conclusion, we find BellSouth compliant in all respects with this checklist item. In particular, we find that BellSouth provides unbundled loops, including subloop elements, in compliance with the requirements of §271 and the rules and regulations of the FCC.

IT IS SO ORDERED BY THE COMMISSION.

6. Checklist Item 5 – Local Transport from the Trunk Side of a Wireline Local Exchange Carrier Switch Unbundled from Switching or Other Services

(a) The Requirements of the Act

BOCs are required pursuant to §271(c)(2)(B)(v) to provide “local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.” Such local transport is provided by interoffice transmission facilities which include both dedicated transport and shared transport.⁸⁰³ Dedicated transport is defined as “incumbent LEC transmission facilities dedicated to a particular customer or carrier that provides telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers.”⁸⁰⁴ Shared transport is defined as “incumbent LEC transmission facilities shared by more than one carrier, including the incumbent LEC, between end office switches and tandem switches, and between tandem switches, in the incumbent LEC's network.”⁸⁰⁵

(b) The Prima Facie Position of BellSouth

BellSouth maintains that the evidence demonstrates that it provides dedicated and shared transport between end office switches, between tandem switches, and between tandem switches and end office switches. BellSouth further contends that it has demonstrated that it has procedures in place for the ordering, maintenance, and provisioning of dedicated and shared transport.⁸⁰⁶ As of March 31, 2001, BellSouth

⁸⁰² *Georgia/Louisiana Order* at ¶157.

⁸⁰³ *Second Louisiana Order*, 20719-20720.

⁸⁰⁴ 47 C.F.R. 51.319(d)(1)(i).

⁸⁰⁵ 47 C.F.R. 51.319(d)(1)(ii).

⁸⁰⁶ BellSouth Post Hearing Brief at pp. 104-105 [*Citing* Tr. p. 138 (*Ruscilli*)].

represents that it has provided 465 dedicated local transport trunks to CLECs in Alabama and 10,907 dedicated trunks providing interoffice transport to CLECs in its 9 state region.⁸⁰⁷

(c) The Position of WorldCom

WorldCom is the only CLEC which challenges BellSouth's assertions that it meets Checklist Item 5. In particular, WorldCom alleges that BellSouth does not provide, as a UNE, dedicated transport that (1) connects two points on a CLEC's network (such as two switches, two network nodes or network node and a switch), or (2) connects a point on a CLEC's network to a point on the network of a different CLEC where the facilities to provide such UNEs are currently in place.⁸⁰⁸

WorldCom asserts that BellSouth's unbundling obligation "extends throughout its ubiquitous transport network."⁸⁰⁹ WorldCom concedes that BellSouth is not required to build new transport facilities to meet specific requests by CLECs for point-to-point service, but asserts that BellSouth is required to provide unbundled service where it has facilities in place. WorldCom thus maintains that where BellSouth has dedicated interoffice transmission facilities currently in place, it is required to provide such facilities on an unbundled basis to the locations and equipment designated by a CLEC, including network nodes connected to CLEC wire centers and switches and to the wire centers and switches of other requesting carriers.⁸¹⁰

WorldCom notes that BellSouth transmission facilities currently run to many nodes (traffic aggregation points) on WorldCom's network. WorldCom asserts that since these facilities are part of BellSouth's existing ubiquitous network, there is no legitimate reason for BellSouth's refusal to provide transport to locations that are currently part of this existing transport network. WorldCom maintains that BellSouth will typically have transport facilities connecting its switches both to the CLEC locations and to locations of third party carriers with whom the CLEC needs to interconnect. WorldCom maintains that in such cases it frequently will be more efficient for the CLEC

⁸⁰⁷ *Id.* [Citing Tr. p. 1340 (*Milner*)].

⁸⁰⁸ Tr. p. 3504 (*Argenbright*).

⁸⁰⁹ *UNE Remand Order*, at ¶324.

⁸¹⁰ WorldCom Post Hearing Brief at pp. 32-33.

to obtain dedicated transport from BellSouth rather than constructing its own new transport facilities.⁸¹¹

WorldCom further maintains that the FCC's rules require BellSouth to provide transmission facilities to the locations of all requesting telecommunications carriers. WorldCom asserts that the FCC's definition of dedicated transport applies to the provision of telecommunications between wire centers and switches of ILECs or "requesting telecommunications carriers."⁸¹² "Requesting telecommunications carriers" in this context means all requesting carriers with whom BellSouth is interconnected, not just a single requesting carrier. WorldCom bases this assertion on the notion that BellSouth's transport network is ubiquitous and BellSouth typically will have transport facilities in place to all requesting telecommunications carriers.

WorldCom points out that ¶440 of the FCC's *Local Competition Order* provides further support for the above principle. According to WorldCom, the aforementioned provisions note a number of locations to which BellSouth must provide unbundled transport. One of those locations is an IXC's point of presence. According to WorldCom, the FCC has clearly indicated that a CLEC is entitled to order unbundled transport to connect to another carrier or an IXC. WorldCom maintains that BellSouth's refusal to provide dedicated transport between a CLEC and another carrier other than BellSouth thus cannot pass muster under Checklist Items 2 and 5.⁸¹³

(d) BellSouth's Rebuttal Position

Contrary to the assertions of WorldCom, BellSouth asserts that the FCC has required BOCs to provide unbundled transport only in their existing networks and has not mandated BOCs to provide unbundled transport between other carrier's locations.⁸¹⁴ Specifically, BellSouth argues that the FCC has held that ILECs are not required to offer, and clearly are not required to construct, dedicated transport facilities between CLEC network locations. In light of the foregoing, BellSouth contends that it is in compliance with Checklist Item 5.⁸¹⁵

(e) The Determination of the Commission

⁸¹¹ *Id.* at p. 33.

⁸¹² *Id.* [Citing 47 CFR §51.319(d)(1)].

⁸¹³ WorldCom Post Hearing Brief at pp. 33-34 [Citing Tr. p. 3505-3509 (*Argenbright*); and Tr. p. 345-354 (*Ruscilli*)].

⁸¹⁴ BellSouth Post Hearing Brief p. 105 [Citing Tr. p. 205 (*Ruscilli*)].

⁸¹⁵ *Id.* [Citing Tr. pp. 206-207; the FCC's *Local Competition Order*, 15718; The FCC's *UNE Remand Order*, 3843].

As is apparent from the foregoing, the only real issue concerning this checklist item centers around WorldCom's allegations that BellSouth's refusal to provide dedicated transport between various points on the WorldCom network to which BellSouth already has facilities and BellSouth's refusal to provide dedicated transport between the facilities of WorldCom and other carriers besides BellSouth, renders BellSouth noncompliant with this checklist item. WorldCom cites the FCC's *Local Competition Order* at ¶440 as support for its position. Interestingly, BellSouth cites that same language for the proposition that it is required to provide unbundled transport only within its existing network and is not required to provide unbundled transport between other carrier's locations.

It appears from a review of ¶440 of the *Local Competition Order* that BellSouth is correct in citing said paragraph for the proposition that it is not required to *construct* dedicated transport facilities between CLEC network locations. WorldCom is correct, however, in citing ¶440 of the *Local Competition Order* for the proposition that BellSouth is required to provide unbundled access to shared transmission facilities between end offices and the tandem switch, as well as unbundled access to dedicated transmission facilities between dedicated transmission facilities, between central offices or between such offices and those of competing carriers where facilities exist. This includes at a minimum "interoffice facilities between end offices and serving wire centers (SWCs), SWCs and IXC POPS, tandem switches and SWCs, end offices or tandems of the incumbent LEC, and the wire centers of incumbent LECs, and requesting carriers." The FCC concluded that an incumbent LEC may not limit the facilities to which such interoffice facilities are connected provided such interconnection is technically feasible, or the use of such facilities. In general, this means that incumbent LECs must provide interoffice facilities between wire centers owned by incumbent LECs or requesting carriers or between switches owned by incumbent LECs or requesting carriers."⁸¹⁶

It appears that the issue presented by WorldCom is one of interpretation and does not involve a *per se* §271 violation. Since BellSouth has otherwise demonstrated compliance with this checklist item, we find that the issue raised by WorldCom would be

⁸¹⁶ *Local Competition Order* at ¶440.

better addressed in the context of other proceedings such as an arbitration or a request for a declaratory ruling.

IT IS SO ORDERED BY THE COMMISSION.

7. Checklist Item 6 – Local switching unbundled from transport, local loop transmission, or other services

(a) The Requirements of the Act

BOCs are required pursuant to §271(c)(2)(B)(vi) to “provide local switching unbundled from transport, local loop transmission, or other services.” The FCC has stated that in order to meet Checklist Item 6, a BOC must demonstrate “that it provides (1) line side and trunk side facilities; (2) basic switching functions; (3) vertical features; (4) customized routing; (5) shared trunk ports; (6) unbundled tandem switching; (7) usage information for billing exchange access; and (8) usage information for billing reciprocal compensation.”⁸¹⁷ The FCC has also explained that in order to comply with the requirements of unbundled local switching, a BOC must make available trunk ports on a shared basis and routing tables resident in the BOC’s switch, as necessary, to provide access to shared transport functionality. Finally, a BOC may not limit the ability of competitors to use unbundled local switching to provide exchange access by requiring a CLEC to purchase a dedicated trunk from an interexchange carrier’s point of presence to a dedicated trunk port on the local switch.⁸¹⁸

(b) The *Prima Facie* Position of BellSouth

BellSouth notes that in the *Second Louisiana Order*, the FCC concluded that BellSouth demonstrated that it provides, or can provide, the line side and trunk side facilities of the switch, the basic switching function, trunk ports on a shared basis, and unbundled tandem switching.⁸¹⁹ BellSouth contends that the evidence in this proceeding demonstrates that it continues to provide unbundled switching in accordance with the requirements of the FCC. BellSouth in fact represents that it provides CLECs unbundled switching capability with the same features and functionality available to BellSouth’s own retail operations, in a nondiscriminatory manner.⁸²⁰

⁸¹⁷ *Bell Atlantic New York Order*, 4128-4129.

⁸¹⁸ *Second Louisiana Order*, 20723; *SWBT Texas Order*, 18521.

⁸¹⁹ *Second Louisiana Order*, 20724-20726, 20732-20733.

⁸²⁰ BellSouth Post Hearing Brief at p. 106 [*Citing* Tr. pp. 140-144 (*Ruscilli*) and 1400-1404 (*Milner*)].

Although the FCC raised several concerns in the *Second Louisiana Order* regarding BellSouth's ability to meet its burden of proof with respect to three specific requirements of this checklist item, BellSouth contends that the testimony introduced in this proceeding demonstrates that it has remedied the FCC's concerns. First, BellSouth notes that it now provides all vertical features that the switch is capable of providing whether or not BellSouth offers a particular feature on a retail basis. Second, BellSouth contends that it makes available two methods of customized routing: Advanced Intelligent Network (AIN) and Line Class Codes (LCC). Third, BellSouth represents that it provides usage information via the ADUF which provides CLECs with records for billing interstate and intrastate access charges (whether the call was handled by BellSouth or an interexchange carrier) or reciprocal compensation charges to other LECs and interexchange carriers for calls originating from, and terminating to, unbundled ports.⁸²¹ BellSouth contends that since no CLEC filed comments questioning BellSouth's compliance with this Checklist Item, it has demonstrated that it provides CLECs with local circuit switching on an unbundled network element basis in compliance with Checklist Item 6.

(c) The Determination of the Commission

It appears that BellSouth has continued to provide the line side and trunk side facilities of the switch, the basic switching function, trunk ports on a shared basis, and unbundled tandem switching in the manner that was previously found compliant by the FCC. It also appears that BellSouth has addressed the concerns raised by the FCC in the *Second Louisiana Order* with respect to vertical features, customized routing through AIN and LCC, and the usage information which BellSouth provides via ADUF that allows CLECs to bill for exchange access and reciprocal compensation. Given the fact that no CLEC filed comments questioning BellSouth's compliance with this checklist item, we conclude that BellSouth has demonstrated compliance with this checklist item.

IT IS SO ORDERED BY THE COMMISSION.

8. Checklist Item 7: Nondiscriminatory access to 911 and E911 services, directory assistance, and operator call completion services

(a) The Requirements of the Act

⁸²¹ *Id.* at p. 107 [Citing Tr. p. 1827 (Scollard)].

BOCs are required pursuant to §271(c)(2)(B)(vii) to provide “[n]ondiscriminatory access to - - 911 and E911 services.” BOCs such as BellSouth must also demonstrate that they provide access to directory assistance (“DA”) and operator services (“OS”) so that CLEC customers can obtain telephone numbers and operator call completion services on a nondiscriminatory basis. Relatedly, §251(b)(3) imposes on each BOC the duty to permit competing providers of telephone exchange service and telephone toll service to have “nondiscriminatory access to ...operator services, directory assistance and directory listings, with no unreasonable delays.” It should be noted, however, that in the *UNE Remand Order*, the FCC removed directory assistance and operator services from the list of required UNEs.⁸²²

BellSouth is also required to properly brand the calls of CLECs and was specifically directed by the FCC in the *Second Louisiana Order* to, in future applications, demonstrate that its method of providing branding results in nondiscriminatory access. BellSouth was required to demonstrate such nondiscriminatory access by showing, for example, that the way it brands operator calls for a competing carrier is the same as the way it provides access to operator services for its own customers.⁸²³

(b) The Prima Facie Position of BellSouth

(i) 911 and E911 Services

With regard to 911 and E911 services, BellSouth notes that the FCC previously concluded that BellSouth met this requirement. BellSouth maintains that it continues to provide nondiscriminatory access to 911 and E911 services in a manner consistent with that previously presented to the FCC. Further, BellSouth notes that no CLEC has raised any concerns with respect to 911 and E911 services.⁸²⁴

(ii) Directory Assistance/Operator Services

BellSouth notes that with respect to directory assistance and operator services, the FCC concluded in its *Local Competition Second Report and Order* that the phrase “nondiscriminatory access to directory assistance and directory listings” means that “the customers of all telecommunications service providers should be able to access each LECs directory assistance service and obtain a directory listing on a nondiscriminatory basis, notwithstanding: (1) the identity of a requesting customer’s local telephone

⁸²² *UNE Remand Order*, ¶¶3891-3892.

⁸²³ *Second Louisiana Order*, 20743-20744.

service provider; or (2) the identity of the telephone service provider for a customer whose directory listing is requested.”⁸²⁵ The FCC specifically noted that the phrase “nondiscriminatory access to operator services” means that “a telephone service customer, regardless of the identity of his or her local telephone service provider, must be able to connect to a local operator by dialing ‘0’, or ‘0 plus’ the desired telephone number.”⁸²⁶

BellSouth contends that it provides CLECs access to directory assistance services and operator call completion services at a level of quality and performance that is at least equal to that which BellSouth provides to itself. According to BellSouth, calls from a CLEC customer served by a BellSouth switch reach the CLECs choice of operator services or directory assistance platforms through customized routing provided by BellSouth.⁸²⁷ Although in the *Second Louisiana Order* the FCC found slight deficiencies with BellSouth’s offer of customized routing, the FCC stated its belief that BellSouth’s Advanced Intelligent Network (AIN) method of providing customized routing had the “potential to meet the requirements of the *Local Competition First Report and Order*.” The FCC nevertheless discounted it for purposes of BellSouth’s second Louisiana application because AIN was not then currently being offered.⁸²⁸ BellSouth contends that it now offers its AIN solution for customized routing to any CLEC that wishes to use it and thus has remedied the previous concerns of the FCC.⁸²⁹

BellSouth contends that the FCC further indicated that BellSouth’s Line Class Code (LCC) solution for customized routing would have been acceptable had BellSouth been able to demonstrate that CLECs can order this option efficiently. Specifically, the FCC held that “BellSouth should not require the competitive LEC to provide actual line class codes which may differ from switch to switch, if BellSouth is capable of accepting a single code region wide.”⁸³⁰ In compliance with this obligation, BellSouth notes that it will now implement one routing pattern per region for a CLEC customer. In addition,

⁸²⁴ BellSouth Post Hearing Brief at p. 107 [*Citing* Tr. pp. 1411-1412 (*Milner*); *Second Louisiana Order*, 20737-20738].

⁸²⁵ BellSouth Post Hearing Brief at p. 108 [*Citing* *Second Louisiana Order*, 20740-20741; 47 U.S.C. §51.217(c)(3); and *In the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas; Administration of the North America Numbering Plan; Proposed 708 Relief Plan and 630 numbering plan area code by Ameritech-Illinois*, Second Report and Memorandum Opinion and Order, 11 FCC rcd. 19392, 19456-19458 (1996) (*Local Competition Second Report and Order*)].

⁸²⁶ *Id.* at 19449.

⁸²⁷ BellSouth Post Hearing Brief at p. 109 [*Citing* Tr. pp. 1405 and 1411 (*Milner*)].

⁸²⁸ *Id.* [*Citing* *Second Louisiana Order*, 20729].

⁸²⁹ *Id.* [*Citing* Tr. p. 1406 (*Milner*)].

although it is not required to do so, BellSouth states that it will voluntarily provide a single routing pattern on a statewide basis. This single routing pattern (whether region-wide or statewide) can be to a BellSouth platform (branded or unbranded), a CLEC platform, or a third party platform.

If, on the other hand, the CLEC chooses to have different routing options for different customers served out of the same switch, BellSouth notes that it will handle such requests on a manual basis. In this scenario, the CLEC will provide information on the LSR designating the appropriate exception routing plan to be used to direct the call. BellSouth contends that the FCC specifically recognized that CLECs that wish to have multiple routing patterns in the same switch should bear the obligation to populate the requisite line class codes on the LSR. Specifically, BellSouth notes that the FCC held as follows:

We agree with BellSouth that a competitive LEC must tell BellSouth how to route its customer calls. If a competitive LEC wants all of its customer's calls routed in the same way, it should be able to inform BellSouth and BellSouth should be able to build the corresponding routing instructions into its systems just as BellSouth has done for itself. If, however, a competitive LEC has more than one set of routing instructions for its customers, it seems reasonable and necessary for BellSouth to require the competitive LEC to include in its order an indicator that will inform BellSouth which selective routing pattern to use.⁸³¹

BellSouth asserts that it provides customized routing in full compliance with FCC's Orders and the Act. Moreover, BellSouth represents that it has shown that it provides CLECs access to Directory Assistance Access Service (DAAS) and the Directory Assistance Call Completion Service (DACC) by trunks connecting the CLEC's point of interface with the BellSouth platform. BellSouth represents that as of March 31, 2001, CLECs in Alabama had 113 directory assistance trunks in place between CLEC's switches and BellSouth's platform.⁸³²

BellSouth notes that it also provides CLECs with access to its Directory Assistance Database Service (DADS) to allow CLECs to use BellSouth's subscriber listing information to set up their own directory assistance services.⁸³³ In addition, BellSouth represents that it provides CLECs with access to Direct Access Directory Assistance Services (DADAS), which gives CLECs direct access to BellSouth's

⁸³⁰ *Id.* [Citing *Second Louisiana Order*, 20730-20731].

⁸³¹ *Id.* at p. 110 [Citing *Second Louisiana Order*, 20730-20731].

⁸³² *Id.* [Citing Tr. p. 1414 (*Milner*)].

⁸³³ *Id.*

directory assistance database so that CLECs may provide directory assistance services. BellSouth contends that all information contained in its listing database for its own end users, CLEC's end users and the end users of independent LECs is available to CLECs in the same manner as it is available to BellSouth itself.⁸³⁴

BellSouth recognizes that the FCC stated in the *Second Louisiana Order* that to the extent that BellSouth chose to rely on performance data to demonstrate its compliance with this checklist item, "it should either disaggregate the data or explain why disaggregation is not feasible or is unnecessary to show nondiscrimination."⁸³⁵ BellSouth contends that it has made a showing that disaggregation of the performance data related to directory assistance and operator services is unnecessary because BellSouth's provision of directory assistance and operator services to CLECs is parity by design. BellSouth contends that the flow of service orders to directory assistance or operator services platforms is exactly the same regardless of the source of the order. BellSouth maintains that since there is no differentiation between calls from BellSouth's retail customers and calls from CLEC's customers, there is no need to disaggregate performance data between the types of calls.⁸³⁶

BellSouth additionally argues that it has demonstrated that it provides subscriber listing information in its directory assistance database in a way that allows CLECs to incorporate that information into their own databases. BellSouth asserts that it now provides a requesting carrier with all the subscriber listings in its operator services and directory assistance databases except listings for unlisted numbers.⁸³⁷

(iii) **Branding/OLNS Technology**

With regard to branding, BellSouth notes that even though the FCC found that BellSouth failed to demonstrate that it complied with the FCC's rebranding requirements in the *Second Louisiana Order*, the FCC also stated that any deficiencies could be easily remedied through a demonstration by BellSouth that the way it brands operator calls for competing carriers is the same as the way it provides access to operator services for its own customers. BellSouth asserts that it is now in full compliance with

⁸³⁴ *Id.*

⁸³⁵ *Id.* at p. 111 [*Citing Second Louisiana Order*, 20742-20743].

⁸³⁶ *Id.* [*Citing Tr.* pp. 1419-1420 (*Milner*)].

⁸³⁷ *Id.* [*Citing Tr.* p. 1415 (*Milner*) and *Second Louisiana Order*, 20745].

the FCC's rebranding requirements and offers CLECs four branding options: (1) BellSouth branded; (2) unbranded; (3) custom branded; and (4) self-branding.

BellSouth asserts that it provides CLECs the ability to apply unique branding via either the AIN or LCC method of customized routing. BellSouth represents that CLECs' use of the LCC method to reach an OS/DA platform is the same as BellSouth's use of the LCC to reach its traffic operator position system ("TOPS"). BellSouth thus maintains that its provision of customized routing is nondiscriminatory. BellSouth further notes that even though it is not required to do so in order to comply with FCC rules or the requirements of §271, BellSouth offers CLECs with an additional methodology to branded/unbranded through the use of Originating Line Number Screening ("OLNS").⁸³⁸

(c) The Position of AT&T and Covad

AT&T and Covad contend that BellSouth does not provide the necessary OSS to order customized OS/DA routing for a specific customer in an efficient and effective manner. AT&T and Covad assert that specific, verifiable terms and conditions for ordering and provisioning customized routing, including business rules and an electronic ordering process (or even a documented manual ordering process) for applying customized routing to specific customers, simply do not exist.⁸³⁹

AT&T and Covad concede that on May 17, 2001, BellSouth published a CLEC information package entitled "Selective Call Routing Using Line Class Codes." According to AT&T and Covad, said document included two "ordering information" paragraphs. AT&T and Covad further assert that the information in the aforementioned document is confusing, inadequate, and impossible to implement.

AT&T and Covad further note that the Florida Third Party Tester cited the same instructions discussed above when it opened exception 69 in the Florida Third Party Test. That exception states that "BellSouth does not provide an accurate method for assigning the Universal Service Order Code ("USOC") to request BellSouth's Operator Services and Directory Assistance ("OS/DA") Branding feature."⁸⁴⁰

In sum, AT&T and Covad assert that it is not clear how CLECs are to submit orders for customized OS/DA routing for particular customers. AT&T and Covad further

⁸³⁸ *Id.* at p. 113 [Citing Tr. p. 1420-1423 (*Milner*); and *Second Louisiana Order*, 20743-20744].

⁸³⁹ Tr. p. 2985-2987 (*Bradbury*).

⁸⁴⁰ AT&T/Covad Post Hearing Brief at p. 77 [Citing Florida Exception 69 available at <http://www.psc.state.fl.us/industry/telecomm/oss/oss>].

maintain that BellSouth currently fails to provide a customized OS/DA routing method by which CLECs can obtain OS/DA service from their own platform or from a third party. Accordingly, AT&T and Covad assert that BellSouth has failed to demonstrate its compliance with Checklist Item 7.

AT&T and Covad further complain about difficulties with the routing and branding provided by OLNS and alleges that BellSouth's OLNS technology is inadequate.⁸⁴¹ AT&T and Covad specifically represent that the set up time when dialing a "0" is greater for a CLEC customer than for a BellSouth customer.⁸⁴²

(d) The Position of WorldCom

WorldCom's witness, Ms. Lichtenberg, testified regarding WorldCom's experiences with the routing and branding provided by OLNS. WorldCom alleges through such testimony that BellSouth's OLNS technologies are inadequate due to improper messages being received by recently converted WorldCom customers as well as improper branding for calls to directory assistance for those same customers.⁸⁴³

(e) BellSouth's Rebuttal

BellSouth asserts that AT&T's routing concerns have been addressed by BellSouth through direct negotiations with AT&T and in multiple arbitration proceedings. In particular, BellSouth contends that it has reached an agreement with AT&T on a procedure that would entail one default routing plan per state with multiple pre-assigned routing options. The multiple routing options will be built into the BellSouth switches where CLEC service is requested and those switches will be able to route the OS/DA traffic for AT&T end users to different platforms, as prescribed by AT&T. BellSouth represents that the routing as prescribed by AT&T will be the default routing for its end users for each of those classes of service.

BellSouth thus contends that it has expended much time and effort to ensure that AT&T can utilize customized routing and has provided information on its web site that enables AT&T and other CLECs to order customized routing. BellSouth further contends that it has provided AT&T with detailed ordering procedures that AT&T concurred with during negotiations with BellSouth. BellSouth thus concludes that it is providing nondiscriminatory access to customized routing to CLECs, both as a legal and

⁸⁴¹ Tr. pp. 2990-2993 (*Bradbury*).

⁸⁴² Tr. p. 2291 (*Bradbury*).

practical matter, under terms and conditions that are just, reasonable, nondiscriminatory and in accordance with all FCC rules.⁸⁴⁴

In response to the complaints of AT&T, Covad, and WorldCom regarding difficulties experienced with the routing and branding provided by OLNS and their allegations that BellSouth's OLNS technology is inadequate, BellSouth notes that it attempted to address the aforementioned concerns by making enhancements to its OLNS in June of 2001. As of that effective date, BellSouth represents that all branded CLEC directory assistance callers are appropriately identified when they arrive at the DA operator. More particularly, BellSouth maintains that the operators are provided the CLEC's name for each caller, which will enable the operators to identify themselves with the name of the correct CLEC. Furthermore, BellSouth asserts that the menu options presented to the CLEC's customers when dialing "0" have been modified to eliminate all reference to any BellSouth services. Based on these technology enhancements, BellSouth contends that it has addressed the concerns raised by AT&T and WorldCom.⁸⁴⁵

With regard to AT&T's allegations that the setup time when dialing "0" is greater for CLEC customers than for BellSouth customers, BellSouth contends that AT&T has failed to rebut BellSouth's showing that AT&T's allegation is based upon the comparison of end users that were each being served by a different switch. BellSouth asserts that the use of such a methodology to compare call setup times is flawed as there is a variation in the call setup times across the different switch types within BellSouth's network. BellSouth contends that the evidence demonstrates that the call setup time for a BellSouth customer and a CLEC customer served from the same switch will be identical. BellSouth represents that AT&T has failed to provide any evidence that it compared end users that were served by the same switch and the result of AT&T's test is thus irrelevant.⁸⁴⁶

Based on the foregoing, BellSouth concludes that it has addressed the concerns raised by AT&T, Covad, and WorldCom and provides all CLECs, including those in Alabama, with nondiscriminatory access to 911/E911 services, directory assistance

⁸⁴³ Tr. p. 3397-3398 (*Lichtenberg*).

⁸⁴⁴ BellSouth Post Hearing Brief at p. 112 [*Citing* Tr. pp. 1483-1486 (*Milner*)].

⁸⁴⁵ *Id.* at pp. 113-114, [*Citing* Tr. p. 1487 (*Milner*)].

⁸⁴⁶ *Id.* at p. 114 [*Citing* Tr. p. 1488 (*Milner*)].

services, and operator call completion services at a level of quality and performance that is at least equal to that which BellSouth provides itself. BellSouth thus contends that it has satisfied the requirements of Checklist Item 7.⁸⁴⁷

(f) The Determination of the Commission

(i) 911/E911

With respect to 911 and E911 services, we concur with BellSouth's position that it continues to provide nondiscriminatory access to 911 and E911 services in a manner consistent with that previously approved by the FCC. Further, no CLEC has raised any concerns with respect to BellSouth's provision of 911 and E911 services. BellSouth is therefore found compliant with this checklist item with regard to the provision of 911 and E911 services.

(ii) Directory Assistance/Operator Services

With respect to the provision of directory assistance and operator services, the concerns raised by the FCC in the *Second Louisiana Order* centered around BellSouth's failure to demonstrate that CLECs could order BellSouth's chosen method of providing customized routing at that time, the Line Class Code methodology. BellSouth is correct in noting that the FCC did not find fault with the Line Class Code methodology *per se*, but raised its concerns due to perceived difficulties CLECs had with ordering customized routing via the Line Class Code method. The FCC further stated its belief that if properly implemented by BellSouth, the Advanced Intelligent Network (AIN) methodology of providing customized routing would potentially meet the requirements of the *Local Competition First Report and Order*.⁸⁴⁸

BellSouth contends that it has now successfully demonstrated that it offers customized routing through the Line Class Code methodology as well as the Advanced Intelligent Network methodology. BellSouth points out that it will now implement one routing pattern per region for a CLEC customer and will also provide a single routing pattern on a statewide basis.

In response to AT&T and Covad's allegations regarding the alleged insufficiency of its ordering process for customer specific OS/DA routing, BellSouth contends that it

⁸⁴⁷ *Id.*

has reached an agreement with AT&T regarding the detailed ordering procedures. BellSouth represents that the only remaining discrepancy is which company will maintain a matrix of line class codes for wire centers in Alabama and which company's service representative will be responsible for populating the LSR with the appropriate Line Class Code.

It appears from a reading of the FCC's *Second Louisiana Order* that the party requesting the customer specific routing, in this case AT&T, bears the primary responsibility for including the appropriate indicator on its LSRs which advises BellSouth of the selective routing pattern to use for that customer. AT&T is apparently willing to include such an indicator on its LSRs, but objects to being required to place Line Class Codes on its orders because of the fact that Line Class Codes differ from central office to central office. AT&T notes that the FCC stated in the *Second Louisiana Order* that BellSouth should not require CLECs to provide actual Line Class Codes on their LSRs.⁸⁴⁹ However, the exact wording of the FCC in the *Second Louisiana Order* was that "[B]ellSouth should not require the competitive LEC to provide the actual Line Class Codes, which may differ from switch to switch, if BellSouth is capable of accepting a single code region-wide."⁸⁵⁰ It is thus likely that the prohibition placed on BellSouth as far as requiring Line Class Codes on LSR's was intended by the FCC to apply only to situations where the CLEC elects a single routing pattern region-wide as BellSouth has. However, the FCC's language does not directly address the present situation where the CLEC desires multiple routing patterns.

Given that this matter comes down to the interpretation of the FCC provisions, we find instructive the conclusions reached by the FCC in its recent *Georgia Louisiana Order* with regard to customized routing. In particular, the FCC rejected AT&T's argument that customized routing is not being offered in the manner required by the *Second Louisiana Order* because single region-wide codes for AT&T's multiple routing options are not yet available to any carriers in BellSouth's territory. The FCC concluded that competitive LECs may obtain multiple customized routing options through AIN without having to specify line class codes. Additionally, the FCC recognized that

⁸⁴⁸ *Second Louisiana Order*, 20729.

⁸⁴⁹ Tr. pp. 2987-2990 (*Bradbury*).

⁸⁵⁰ *Second Louisiana Order* at ¶224.

BellSouth and AT&T now have a contract establishing region-wide and state-wide codes for customized routing. The FCC also noted that §271 proceedings were not the ideal venue for deciding whether to include line class codes among the specific attributes of the switching element.⁸⁵¹

The FCC also rejected in its *Georgia Louisiana Order* AT&T's assertions that customized routing options cannot be included in electronic orders due to inadequate documentation by BellSouth. The FCC found that CLEC's can in fact submit orders to BellSouth for customized routing using line class codes or AIN. Moreover, the FCC concluded that BellSouth provides documentation explaining how to let an electronically order customized OS/DA branding using its Originating Line Number Screening ("OLNS").⁸⁵²

(iii) Branding

With respect to branding, BellSouth concedes that the FCC noted problems with BellSouth's branding methodology in the *Second Louisiana Order*. However, BellSouth correctly notes that the FCC also stated in the *Second Louisiana Order* that any such deficiencies could be easily remedied through a demonstration by BellSouth that the way it brands operator calls for competing carriers is the same as the way it provides access to operator services for its own customers. It appears that BellSouth has demonstrated that it provides CLECs with four branding options: BellSouth branded, unbranded, custom branded, and self branding. BellSouth has also demonstrated that it provides CLECs with the ability to apply unique branding by either the AIN or LCC method of customized routing. BellSouth further appears to have remedied the previous concerns noted by the FCC in the *Second Louisiana Order* by demonstrating that the line class code method which BellSouth offers CLECs to reach OS/DA platforms is the same as BellSouth's use of the line class code to reach its Traffic Operator Position System ("TOPS").

BellSouth has also offered CLECs an additional methodology to brand/unbrand through the use of OLNS even though it is not required to do so in order to comply with the FCC rules or the requirements of §271. AT&T and WorldCom have, however, cited

⁸⁵¹ *Georgia Louisiana Order* at ¶254.

⁸⁵² *Id.* at ¶255.

deficiencies with OLNS. Specifically, AT&T contends that BellSouth's OLNS technology is inadequate because the setup time when dialing a "0" is greater for a CLEC customer than for a BellSouth customer. WorldCom alleges that BellSouth's OLNS technologies are inadequate due to improper messages being received by WorldCom's UNE-P customers.

BellSouth responds to these CLEC allegations regarding OLNS by noting that it has attempted to address the concerns of the CLECs by making enhancements to its OLNS in June of 2001. As of that effective date of those enhancements, BellSouth represents that all branded CLEC directory assistance callers are appropriately identified when they arrive at the directory assistance operator.

BellSouth specifically disputes AT&T's allegations regarding disparities in the setup time for CLECs and AT&T when customers dial "0". BellSouth contends that AT&T's allegations in this regard are based upon a comparison of end users that were each being served by a different switch. BellSouth contends that the evidence demonstrates that when customers are served from the same switch, the call setup times for BellSouth customers or CLEC customers will be identical.

It appears from our review of the record that BellSouth has, through a preponderance of the evidence, demonstrated its compliance with the branding requirements established by the Act and the FCC. BellSouth is, therefore, found to be compliant with this checklist item with respect to branding. Our Conclusion in this regard is supported by findings of the FCC in its *Georgia/Louisiana Order* that BellSouth's provision of OLNS was not discriminatory.⁸⁵³

(iv) Conclusion

Based on the foregoing, we find BellSouth compliant with this checklist item in all respects.

IT IS SO ORDERED BY THE COMMISSION.

9. Checklist Item 8: Nondiscriminatory provision of white pages directory listings

(a) The Requirements of the Act

⁸⁵³ *Georgia/Louisiana Order* at ¶256.

BOCs are required, pursuant to §271(C)(2)(B)(viii), to provide “[w]hite pages directory listings for customers of the other carrier’s telephone exchange service.” In order to demonstrate its compliance with this checklist item, a BOC must show that it is providing white page listings for competitors customers with the same accuracy and reliability that it provides for its own customers.⁸⁵⁴

(b) The Prima Facie Position of BellSouth

BellSouth notes that the FCC previously concluded that it had satisfied its obligations under this checklist item.⁸⁵⁵ BellSouth maintains that the evidence in this proceeding demonstrates that it continues to make its white pages listings available to CLECs and allows other carriers access to BellSouth’s white page listing capabilities. BellSouth further notes that no CLEC has filed comments questioning BellSouth’s compliance with this checklist item. BellSouth thus concludes that it has met its obligations pursuant to this checklist item.⁸⁵⁶

(c) The Determination of the Commission

BellSouth is correct in noting that the FCC previously concluded in the *Second Louisiana Order* that BellSouth was compliant with this checklist item. We concur with BellSouth’s representation that the evidence introduced in this proceeding demonstrates that BellSouth continues to make its white pages listings available to CLECs and allows other carriers access to its white page listing capabilities. Further, no CLEC has filed comments questioning BellSouth’s compliance with this checklist item. We, therefore, find BellSouth compliant with Checklist Item 8.

IT IS SO ORDERED BY THE COMMISSION.

10. Checklist Item 9: Nondiscriminatory access to telephone numbers

(a) The Requirements of the Act

Pursuant to §271(c)(2)(B)(ix), BOCs are required to offer “nondiscriminatory access to telephone numbers for assignment to the other carrier’s telephone exchange service customers” until the date by which telecommunications numbering administration guidelines, plan, or rules are established. After that date, BOCs must comply “with such guidelines, plan, or rules.”

⁸⁵⁴ *Bell Atlantic New York Order*, 4135.

⁸⁵⁵ BellSouth Post Hearing Brief at p. 115 [*Citing Second Louisiana Order*, 20747].

⁸⁵⁶ *Id.* [*Citing* Tr. p. 151-152 (*Ruscilli*); and Tr. p. 1425 (*Milner*)].

(b) The Position of BellSouth

BellSouth notes that the FCC previously found it compliant with this checklist item in the *Second Louisiana Order* and points out that no CLEC in this proceeding has filed comments questioning BellSouth's compliance with this item.⁸⁵⁷ BellSouth also points out that since the time FCC issued its *Second Louisiana Order*, NeuStar has assumed all the responsibilities of the North American Numbering Plan Administrator (NANPA) and BellSouth no longer has any responsibility for the assignment of central office codes (NXXs) or for NPA relief planning.⁸⁵⁸ BellSouth, therefore, notes that it is no longer a central office code administrator and no longer performs any functions with regard to number administration or assignment. BellSouth contends, however, that it offers through its agreements and its SGAT, nondiscriminatory access to telephone numbers and thus satisfies the requirements of Checklist Item 9.⁸⁵⁹

(c) The Determination of the Commission

BellSouth is correct in noting that the FCC previously found it compliant with this checklist item in the *Second Louisiana Order*. Further, since the time the FCC issued its *Second Louisiana Order*, an independent third party (NeuStar) has assumed all the responsibilities of the North American Numbering Plan Administrator leaving BellSouth with no remaining responsibilities for the assignment of central office codes (NXXs) or for NPA relief planning. BellSouth does, however, offer nondiscriminatory access to telephone numbers through its interconnection agreements and its SGAT. We, therefore, find BellSouth compliant with this checklist item and note that no CLEC has challenged BellSouth's compliance in this regard.

IT IS SO ORDERED BY THE COMMISSION.

11. Checklist Item 10: "Nondiscriminatory access to databases and the associated signaling necessary for call routing and completion"**(a) The Requirements of the Act**

BOCs are required, pursuant to §271(c)(2)(B)(x), to offer "[n]ondiscriminatory access to databases and associated signaling necessary for call routing and completion." In the *Local Competition First Report and Order*, the FCC identified signaling networks and call related databases as network elements and concluded that

⁸⁵⁷ *Id.* [Citing *Second Louisiana Order*, 20751].

⁸⁵⁸ *Id.* [Citing Tr. p. 1426-1427 (*Milner*)].

LECs must provide for the exchange of signaling information between LECs necessary to exchange traffic and access call related databases.⁸⁶⁰

(b) The *Prima Facie* Position of BellSouth

BellSouth contends that it offers CLECs the same access to signaling and call related databases that it uses. BellSouth represents that the access offered allows calls to or from CLEC customers to be set up quickly and routed as efficiently as calls to or from BellSouth customers.

With regard to signaling networks, BellSouth contends that when a CLEC purchases unbundled local switching from BellSouth, it automatically obtains the same access to BellSouth's switching network as BellSouth provides itself. BellSouth further maintains that it provides nondiscriminatory access to its signaling networks, including signal transfer points (STP), signaling links, and service control points (SCP). BellSouth represents that it provides Signal System Seven (SS7) network service to CLECs for their use in furnishing SS7 based services to their own end users, or to the end users of another CLEC that has subtended its STP to the signaling network of the interconnecting CLEC. As of April 20, 2001, BellSouth represents that eight CLECs have connected directly to BellSouth's signaling network in Alabama.⁸⁶¹

With regard to call related databases, BellSouth asserts that it provides CLECs with nondiscriminatory access to a variety of such databases. Specifically, BellSouth contends that it offers access to its Line Information Database (LIDB); Toll Free Number Database; Local Number Portability Database; Calling Name Delivery Database (CNAM); Advance Intelligence Services Feature Database; and the 911/E911 Databases.

BellSouth additionally represents that it provides access to a Service Control Point (SCP), a network element where call related databases reside. SCPs also provide operational interfaces to allow for the provisioning, administration, and maintenance of subscriber data and service application data. BellSouth asserts that each of the aforementioned databases are available to a requesting CLEC in the same manner and via the same signaling links to the databases that are used by BellSouth for

⁸⁵⁹ *Id.* [Citing Tr. p. 155 (*Ruscilli*)].

⁸⁶⁰ 47 C.F.R. §51.319.

⁸⁶¹ BellSouth Post Hearing Brief at p. 116 [Citing Tr. p. 1430-1431 (*Milner*)].

itself. BellSouth maintains that all the information in these databases is kept in accordance with the confidentiality requirements of 47 C.F.R. §222.⁸⁶²

BellSouth asserts that on a region-wide basis, LIDB processed more than 1.5 billion queries from CLECs and others during the period from January 1997 through February 2001. As of April 1, 2001, BellSouth represents that it had 70 CNAM customers, consisting of both CLECs and independent LECs, across the BellSouth region. BellSouth notes that from January 1997 through March 31, 2001, CLECs and other service providers across BellSouth's region completed approximately 8.2 billion queries to BellSouth's toll free number database.⁸⁶³

BellSouth further notes that the FCC, in its *Second Louisiana Order*, ruled that BellSouth had demonstrated that it satisfied the requirements of Checklist Item 10.⁸⁶⁴ Given its continued performance, BellSouth concludes that it has demonstrated its continuing compliance with Checklist Item 10 and notes that no CLEC has filed comments questioning such compliance.⁸⁶⁵

(c) The Determination of the Commission

BellSouth is correct in noting that the FCC, in its *Second Louisiana Order*, ruled that BellSouth had demonstrated that it satisfied the requirements of this checklist item. We find that BellSouth has demonstrated that it has continued to perform in a manner which was previously found satisfactory by the FCC in the *Second Louisiana Order* with regard to this checklist item. We, therefore, conclude that BellSouth is in compliance with this checklist item and note that no CLEC has filed comments questioning same.

IT IS SO ORDERED BY THE COMMISSION.

12. Checklist Item 11: Number Portability

(a) The Requirements of the Act

Pursuant to §271(c)(2)(B)(xi), BOCs are required to provide number portability in full compliance with the FCC's regulations governing same which are generally set forth at 47 C.F.R. §52.20 *et seq.* In fact, all local exchange carriers are obligated, pursuant to §251(b)(2) of the Act, to provide, to the extent technically feasible, number portability in accordance with the requirements prescribed by the FCC.

⁸⁶² *Id.* [Citing Tr. p. 1441 (*Milner*)].

⁸⁶³ *Id.* pp. 1434-1438.

⁸⁶⁴ *Id.* at p. 117 [Citing *Second Louisiana Order*, 20753].

(b) The *Prima Facie* Position of BellSouth

BellSouth contends that it has implemented a comprehensive process to provide local number portability (“LNP”) in full conformance with the FCC’s regulations governing same. In particular, BellSouth contends that it provides interim number portability through remote call forwarding, direct inward dialing, and directory number routing indexing. BellSouth further represents that it provides permanent number portability to competing carriers.⁸⁶⁶ BellSouth contends that through its implementation of local number portability, it has enabled customers of facilities based CLECs to retain existing telephone numbers “without impairment in quality, reliability, or convenience.”⁸⁶⁷

BellSouth further asserts that the performance data submitted in this proceeding confirms that it continues to provide number portability in compliance with this checklist item. For LNP standalone, BellSouth contends that it met every mechanized, partially mechanized, and manual FOC Timeliness and Reject Interval measure for May through September 2001 except for a few fully mechanized measures in June. BellSouth contends it also met the Reject Interval for partially mechanized and non-mechanized orders for May through September 2001. Additionally, BellSouth contends that it met virtually every submetric for Missed Installation Appointments for May through September 2001.⁸⁶⁸

BellSouth contends that the record in this proceeding demonstrates that as of March 31, 2001, BellSouth has equipped 139 of its 151 switches in Alabama with permanent LNP capability. According to BellSouth, those 139 switches account for over 97% of BellSouth’s access lines.

BellSouth similarly represents that as of February 28, 2001, BellSouth has equipped in its nine state region switches accounting for over 97% of its access lines with permanent LNP capability, including switches in all major marketing areas. BellSouth asserts the remaining access lines, which generally are located in rural areas, are not yet subject to extensive competition, but are nonetheless capable of interim number portability (“INP”). BellSouth contends that these access lines will be equipped for permanent LNP at the request of a CLEC via the BFR process.

⁸⁶⁵ *Id.*

⁸⁶⁶ Tr. pp. 1442-1444 (*Milner*).

⁸⁶⁷ BellSouth Post Hearing Brief at p. 118 [*Citing* 47 U.S.C. §153(30)].

⁸⁶⁸ *Id.* at 118-119.

As of March 31, 2001, BellSouth represents that it has ported 56,516 business directory numbers and 7,098 residence directory numbers in Alabama using LNP. In its nine state region, BellSouth represents that it has ported 1,113,649 business and 133,703 residence directory numbers as of that same date. BellSouth contends that these data show that BellSouth has implemented LNP in conformance with its statutory and regulatory obligations.⁸⁶⁹

(c) The Position of AT&T and Covad

AT&T and Covad note that the FCC has recognized that “number portability is essential to meaningful competition in the provision of local exchange services” because it provides consumers with flexibility.⁸⁷⁰ AT&T and Covad thus contend that BellSouth must provide number portability in a manner that allows users to retain existing telephone numbers, “without impairment in quality, reliability or convenience when switching from one telecommunications carrier to another.”⁸⁷¹ AT&T contends, however, that it has experienced numerous and persistent problems with BellSouth’s implementation of number portability. For example, AT&T contends that it has experienced incidents of customers losing the ability to receive inbound calls; chronic number reassignment problems; incidences of duplicate billing; problems with partial ports of service; and difficulties transferring customers back to BellSouth immediately, if necessary (“snap back”). AT&T additionally contends that BellSouth’s self reported results for number portability do not meet benchmarks for several of the reported metrics.⁸⁷²

AT&T contends that the loss of inbound service to its customers during the porting process appears to stem from a process problem at BellSouth that causes customers to lose the ability to receive calls from BellSouth customers. AT&T contends that the problem has become so pervasive that when porting business customers, “AT&T has established special procedures to call BellSouth and remind them to do the translation work on their switches on the due date.”⁸⁷³

⁸⁶⁹ *Id.* at p. 119 [Citing Tr. pp. 1443-1444 (Milner)].

⁸⁷⁰ AT&T/Covad Post Hearing Brief at p. 74 [Citing *In the Matter of Telephone Number Portability*, First Report and Further Notice of Proposed Inquiry, 11 FCC Rcd. 8352, ¶28 (July 2, 1996) (CC Docket No. 95-116, FCC 96-286)].

⁸⁷¹ *Id.* [Citing 47 U.S.C. §251(b)(2); See also *Bell Atlantic New York Order*, ¶367; *SWBT Texas Order*, ¶369].

⁸⁷² *Id.* [Citing Tr. p. 2740 (Wilson)].

⁸⁷³ *Id.* at p. 75 [Citing Tr. p. 2741 (Wilson)].

With regard to number assignment problems, AT&T and Covad contend that problems occur when a telephone number is ported to AT&T, Covad or another CLEC, yet BellSouth erroneously reassigns the number to a new BellSouth line. As a result, the CLEC customer receives calls from people who are attempting to reach the new BellSouth customer. AT&T and Covad contend that such problems can surface more than a year after numbers are ported to CLEC customers. AT&T and Covad further represent that such difficulties are rare among BellSouth customers⁸⁷⁴

AT&T contends that duplicate billing occurs when AT&T customers continue to receive bills from BellSouth after they have switched their local service to AT&T and ported their number. AT&T represents that BellSouth has also had problems porting a subset of a customer's numbers, particularly when the main number BellSouth uses for billing purposes is ported to a CLEC.⁸⁷⁵

AT&T further contends that unlike every other BOC, BellSouth does not have procedures for performing "snap backs."⁸⁷⁶ According to AT&T, snap backs occur when a significant problem arises at the time of a port such as loss of dial tone or noise on the line. AT&T asserts that an efficient snap back process is necessary to ensure the continuity of service for customers.

AT&T and Covad contend that the aforementioned problems demonstrate that BellSouth fails to provide number portability of sufficient quality and reliability. AT&T and Covad accordingly contend that BellSouth has failed to demonstrate that it provides number portability in compliance with Checklist Item 11.⁸⁷⁷

AT&T and Covad also maintain that the LNP problems it has experienced are exacerbated by BellSouth's lack of trained and equipped personnel to handle problems with LNP orders. Specifically, AT&T and Covad contend that BellSouth's service center representatives refer all LNP related problems to a single person who typically works from noon until 8:00 P.M. Thus, any LNP troubles arising outside of those hours must wait. Although BellSouth has assigned a backup to assist during the hours that BellSouth's primary subject matter expert is out of the office, AT&T and Covad contend

⁸⁷⁴ *Id.* [Citing Tr. p. 2741, and 2745 (Wilson)].

⁸⁷⁵ *Id.* at pp. 75-76 [Citing Tr. p. 2747 (Wilson)].

⁸⁷⁶ *Id.* [Citing Tr. p. 2710-2711 (Wilson)].

⁸⁷⁷ *Id.*

that the reality is that BellSouth only has two people trained and equipped to handle problems with LNP orders.⁸⁷⁸

(d) The Rebuttal Position of BellSouth

BellSouth responds to AT&T's allegations regarding the erroneous reassignment of ported telephone numbers by noting that it devised an interim manual solution effective January 2001 to combat any such problems and is currently pursuing a permanent software solution. BellSouth notes that it devised its interim manual solution even though AT&T did not discover and report the erroneous reassignment issue until the last quarter of 2000.⁸⁷⁹

To ensure that ported numbers will not be mistakenly reassigned, BellSouth notes that it will leave its manual workaround in place until a software solution has been implemented. Additionally, BellSouth contends that it is working with all CLECs to verify all numbers that have been ported since January 2000. BellSouth thus contends that the incidents reported by AT&T are not evidence of a systemic problem.⁸⁸⁰

With regard to AT&T's allegations of duplicate billing, BellSouth concedes that duplicate billing does, on occasion, occur after customers are switched to CLECs. BellSouth in fact argues that some duplicate billing is proper and even necessary. For example, duplicate billing will occur for disconnects processed during the current billing period because a final bill is required to close the account. Similarly, where a CLEC does not transfer all of the customer's services, BellSouth will continue to bill for the services BellSouth is providing. BellSouth contends that these factors, in conjunction with AT&T and Covad's failure to provide the Commission with any specific examples to support its allegations of improper duplicate billing, demonstrates that duplicate billing is not a widespread problem.⁸⁸¹

BellSouth further represents that AT&T's allegations that some of its customers occasionally lose the ability to receive calls from BellSouth's customers due to BellSouth's failure to perform translation work on switches are unsupported by the evidence. BellSouth in fact contends that the issues raised by AT&T are well over one year old and have long since been resolved. Specifically, BellSouth notes that AT&T

⁸⁷⁸ [Citing Tr. p. 3176 (*Berger*)].

⁸⁷⁹ BellSouth Post Hearing Brief at p. 119 [Citing Tr. p. 1186 (*Ainsworth*)].

⁸⁸⁰ *Id.* [Citing Tr. p. 1187 (*Ainsworth*)].

⁸⁸¹ *Id.* at p. 120 [Citing Tr. p. 1187 (*Ainsworth*)].

withdrew its allegations related to the loss of inbound calls with respect to its residential customers.⁸⁸²

BellSouth further alleges that most of the problems complained of by AT&T with regard to the inability of its customers to receive calls from BellSouth customers have been caused by AT&T. For example, BellSouth cites instances where AT&T sent local service requests to BellSouth using a valid company code while, at the same time, submitting the Number Porting Administration Center (NPAC) a different company code. In other words, AT&T put one code on the orders it sent to BellSouth, but a different company code on the orders that it sent to NPAC. BellSouth contends that AT&T's failure to use the correct company codes meant that the two sets of orders could not be mechanically coordinated and as a result, the BellSouth gateway system was not updated to match the number port notice provided in the original LSR. BellSouth alleges that although it brought this problem to AT&T's attention numerous times, AT&T continued to alter the company codes without informing BellSouth thereby causing the problems complained of in this proceeding. BellSouth maintains that it cannot address the porting difficulties presented by AT&T until AT&T modifies its processes and passes the correct information on its LSRs to BellSouth.⁸⁸³

As another example of problems caused by AT&T, BellSouth cites an incident where AT&T alleged that one of its customers could not complete calls from an office location and a cell phone to the end user's home number. BellSouth notes that the home telephone number in question was assigned to an AT&T NPA/NXX code and was never part of BellSouth's network. Moreover, the telephone number provided as the office number was shown in the LNP database as having been ported from an AT&T switch to another AT&T switch. BellSouth thus asserts that the inability to complete calls could not have been caused by any company other than AT&T since the telephone numbers would not have been ported from BellSouth's network to AT&T's network. BellSouth contends that it cannot be held responsible for such mistakes by AT&T.⁸⁸⁴

With regard to AT&T's complaints concerning partial ports, BellSouth contends that AT&T has failed to provide any concrete examples in support of its allegations. BellSouth argues that to the contrary, the record in this proceeding demonstrates that

⁸⁸² *Id.* [Citing Tr. p. 2824 (Wilson)].

⁸⁸³ *Id.* at p. 121 [Citing Tr. p. 1493 (Milner)].

BellSouth successfully conducts partial migration for CLECs without any interruption to the service of end users on a daily basis.⁸⁸⁵

With regard to AT&T's position that a "snap back" process should be in place to resolve situations where customers change their minds about switching local service providers from BellSouth to a CLEC, BellSouth notes that AT&T raised this issue outside the context of prefiled testimony in this proceeding and did not clearly explain what snap back is. Nonetheless, BellSouth contends that contrary to AT&T's assertions, the snap back process is not an efficient means for assuring the continuity of service. BellSouth asserts that the most efficient processes is for a CLEC to perform adequate testing prior to number porting to eliminate any CLEC facility issues. BellSouth further asserts that CLECs, including AT&T, should work with BellSouth to resolve any post-port service issues at the time of the conversion to minimize end user service impacts, additional customer inconvenience, and unnecessary work. In the case of post port problems, BellSouth notes that where a problem was not identified and resolved pre-port, a CLEC can request the immediate return of the customer involved to BellSouth. At any rate, BellSouth contends that its handling of the return of end users in cases where there are porting problems either pre or post-port satisfies the requirements of Checklist Item 11.⁸⁸⁶

BellSouth also disputes AT&T's allegations that BellSouth does not employ an adequate staff that is trained to handle LNP issues. BellSouth asserts that the evidence presented throughout these proceedings shows that BellSouth employs over 400 service representatives who are highly trained in LNP processes in order to provide assistance before AT&T or any other CLEC accepts responsibility for ported numbers. BellSouth also maintains that it has created an additional center to further assist CLECs with any post port problems which is staffed by 13 employees. Finally, BellSouth contends that it has implemented a process to handle emergency situations on a 24 hour 7 day per week basis.⁸⁸⁷

(e) The Determination of the Commission

⁸⁸⁴ *Id.*

⁸⁸⁵ *Id.* at pp. 121-122 [*Citing* Tr. p. 1188 (*Ainsworth*)].

⁸⁸⁶ *Id.* at pp. 122-123.

⁸⁸⁷ *Id.* [*Citing* Tr. p. 1204 (*Ainsworth*)].

From our review of the foregoing, it appears that BellSouth has successfully rebutted each of AT&T's allegations of its noncompliance with the requirements of Checklist Item 11. BellSouth's rebuttal position is buttressed by the fact that for LNP Standalone, BellSouth met every Mechanized, Partially Mechanized, and Manual FOC Timeliness and Reject Interval measure for May through September 2001 except for a few Fully Mechanized measures in June. Further, BellSouth met the Reject Interval for Partially Mechanized and Non-Mechanized orders for May through September 2001, as well as meeting virtually every submetric for Missed Installation Appointments for May through September 2001. It therefore appears that BellSouth is compliant with Checklist Item 11. More particularly, BellSouth appears to provide local number portability in a manner that allows users to retain existing telephone numbers without impairment in quality, reliability, or convenience when switching from BellSouth to another carrier.

IT IS SO ORDERED BY THE COMMISSION.

13. Checklist Item 12: Nondiscriminatory access to services or information necessary to implement local dialing parity in accordance with the requirements of §251(B)(3)

(a) The Requirements of the Act

BOCs are required pursuant to §271(c)(2)(B)(xii) to provide "nondiscriminatory access to such services or information as are necessary to allow requesting carriers to implement local dialing parity in accordance with the requirements of §251(b)(3)." All local exchange carriers are required pursuant to §251(b)(3) "to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and ...to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance and directory listing with no unreasonable dialing delays."

(b) The *Prima Facie* Position of BellSouth

BellSouth asserts that CLEC end users are not required to use access codes or to dial additional digits to complete calls to BellSouth customers and vice-versa. BellSouth contends that end user customers of CLECs that are being served via the UNE platform have available local dialing plans in the same manner as BellSouth's retail customers. The interconnection of the BellSouth network and the network of the

CLEC is, according to BellSouth, seamless from the end user's prospective. BellSouth maintains that its actions and performance at this time are consistent with the showing previously made to the FCC upon which the FCC found that the statutory requirements for this checklist item were met in the *Second Louisiana Order*.⁸⁸⁸ BellSouth thus contends that it has complied with Checklist Item 12 and notes that no CLEC has questioned BellSouth's compliance with this checklist item.

(c) The Determination of the Commission

BellSouth correctly notes that the FCC in its *Second Louisiana Order* found BellSouth compliant with this checklist item. We find that BellSouth has continued to provide nondiscriminatory access to the services and/or information necessary to implement local dialing parity in a manner that was previously found satisfactory by the FCC. BellSouth has demonstrated that CLEC end users are not required to use access codes or to dial additional digits to complete calls to BellSouth customers and vice versa. We, therefore, find BellSouth compliant with this checklist item and note that no CLEC has questioned BellSouth's compliance with this checklist item.

IT IS SO ORDERED BY THE COMMISSION.

**14. Checklist Item 13: Reciprocal compensation arrangements
in accordance with the requirements of §252(d)(2)**

(a) The Requirements of the Act

Pursuant to §272(c)(2)(B)(xiii), BOCs are required to enter into reciprocal compensation arrangements which are in accordance with the requirements of §252(d)(2). That section of the Act establishes a standard for just and reasonable prices for such reciprocal compensation and requires that each carrier receive mutual and reciprocal recovery of the costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier.

(b) The *Prima Facie* Position of BellSouth

BellSouth notes that the FCC stated in its *Bell Atlantic New York Order* that a BOC complies with Checklist Item 13 when "it (1) has reciprocal compensation arrangements in accordance with §252(d)(2) in place, and (2) is making all required

⁸⁸⁸ *Id.* at pp. 123-124 [Citing Tr. p. 1446 (*Milner*); and *Second Louisiana Order*, n. 251].

payments in a timely fashion.”⁸⁸⁹ BellSouth maintains that it complies with these two prerequisites since it has in place reciprocal compensation arrangements set forth in binding interconnection agreements, and makes payments pursuant to those agreements in a timely manner. BellSouth notes that aside from WorldCom’s arguments set forth below, no CLEC has questioned BellSouth’s compliance with the test set forth by the FCC.⁸⁹⁰ BellSouth additionally asserts that it has revised the local traffic definition of the reciprocal compensation language contained in the terms and conditions portion of the SGAT which it submitted for approval in this proceeding in order to comply with the FCC’s *Local Competition Order on Remand and Report and Order*.⁸⁹¹

(c) The Position of WorldCom

(i) FX Traffic

WorldCom asserts that virtual foreign exchange (FX) traffic must be treated as local traffic subject to the payment of reciprocal compensation in order for BellSouth to satisfy Checklist Item 13.⁸⁹² WorldCom asserts that the proper method for determining the jurisdictional nature of FX traffic is to compare the rate centers associated with the originating and terminating NPA/NXX’s on such traffic. WorldCom also contends that FX calls are rated as local on an industry-wide basis and points out that BellSouth treats its own FX service as a local service. Consequently, WorldCom urges the Commission to permit CLECs to offer competitive FX service to their customers on nondiscriminatory terms and to require BellSouth to pay reciprocal compensation to CLECs for this local traffic.⁸⁹³

WorldCom asserts that a determination that the FX service of CLECs is toll service would be detrimental to the local market because it would provide significant competitive advantages to BellSouth. Specifically, WorldCom asserts that such a determination would allow BellSouth to avoid paying reciprocal compensation, would

⁸⁸⁹ *Bell Atlantic New York Order*, 4141.

⁸⁹⁰ BellSouth Post Hearing Brief p. 124 [*Citing* Tr. p. 167 (*Ruscilli*)].

⁸⁹¹ *Id.* at p. 124 [*Citing Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd. 9151 (2001) (“*Local Competition Order on Remand and Report and Order*”)].

⁸⁹² Tr. pp. 3515-3522 (*Argenbright*).

⁸⁹³ WorldCom Post Hearing Brief at p. 34 [*Citing* Tr. pp. 3515-3522 (*Argenbright*)].

allow BellSouth to assess access charges on local calls, and would shield BellSouth's local FX service from competition.⁸⁹⁴

(ii) The Tandem Interconnection Rate

WorldCom also argues that BellSouth does not comply with the requirements related to tandem interconnection compensation because BellSouth insists that a CLEC must provide both geographic comparability and similar functionality in order to be entitled to compensation at the tandem interconnection rate. WorldCom maintains that a CLEC need only establish geographical compatibility in order to be entitled to compensation at the tandem interconnection rate.⁸⁹⁵

(d) The Rebuttal Position of BellSouth

(i) Foreign Exchange Traffic

BellSouth responds to WorldCom's assertions regarding foreign exchange traffic by stating that the reciprocal compensation which is required by §251(b)(5) is appropriate only for local traffic. Since virtual FX traffic is not local, BellSouth argues that no reciprocal compensation applies.

BellSouth agrees with the contention that carriers are permitted to assign NPA/NXX codes in any manner desired including outside the local calling area or rate center with which the codes are associated. However, as repeatedly affirmed by the FCC and contrary to WorldCom's assertions, BellSouth maintains that the determination of whether a call is local depends on the physical location of the calling and called parties; that is, the end points of a call determine the jurisdiction of the call, not the NPA/NXX dialed. BellSouth thus maintains that if WorldCom chooses to provide its numbers outside the local calling area, calls originated by BellSouth end users to those numbers are not local calls, and no reciprocal compensation applies.⁸⁹⁶

BellSouth maintains that several state commissions have agreed with its position and found that FX traffic is not local service and that reciprocal compensation should not apply to such traffic. For example, BellSouth maintains that the Texas PSC found that Southwestern Bell satisfied Checklist Item 13 even though Southwestern Bell does not treat FX traffic as local traffic subject to the payment of reciprocal compensation.

⁸⁹⁴ *Id.*

⁸⁹⁵ Tr. pp. 3510-3515 (*Argenbright*).

⁸⁹⁶ BellSouth Post Hearing Brief at p. 125 [*Citing* Tr. pp. 214-215, p. 223 (*Ruscilli*)].

BellSouth maintains that similar decisions were reached by the state commissions in Maine and Illinois.⁸⁹⁷

(ii) The Tandem Interconnection Rate

With regard to WorldCom's arguments concerning tandem interconnection compensation, BellSouth acknowledges that a CLEC must only demonstrate geographic comparability to receive the tandem interconnection rate. BellSouth notes, however, that the FCC recently established a phased-in interim regime that will govern intercarrier compensation for ISP-bound traffic over the next three years. BellSouth asserts that the FCC made clear that intercarrier compensation payments under the interim regime are not subject to the reciprocal compensation obligations in §251 of the Act and gave individual BOCs the ability to opt into the FCC's scheme if the BOC agreed to exchange all §251(b)(5) traffic at the designated ISP compensation rates. BellSouth asserts that it chose to opt into this arrangement rendering WorldCom's arguments relevant only to the extent that a "CLEC declines BellSouth's offer to exchange 251(b)(5) traffic at the same rate as ISP traffic."⁸⁹⁸

BellSouth thus maintains that it has established just and reasonable rates for reciprocal compensation and has been making all required payments in a timely fashion. BellSouth, therefore, contends that it has satisfied Checklist Item 13.

(e) The Determination of the Commission

We note at the outset that BellSouth is correct in its representation that the traditional method of determining the jurisdictional nature of a call has been to analyze the end points of the call based on the physical location of the calling and called parties. Although this approach has been called into question by the DC Circuit Court of Appeals with respect to calls to Internet Service Providers (ISPs), it is still the approach adhered to with respect to other types of calls including FX traffic.⁸⁹⁹ An application of the end to end analysis indicates that BellSouth is correct in its position that inter-carrier compensation is not due on FX traffic because the calling and called parties are not in the same local calling area.

⁸⁹⁷ *Id.* [Citing Tr. p. 221 (*Ruscilli*)].

⁸⁹⁸ *Id.* at pp. 125-126 [Citing Tr. p. 211-212 (*Ruscilli*); and the FCC's *Local Competition Order on Remand and Report and Order*].

⁸⁹⁹ *WorldCom v. FCC*, No. 01-1218 (D.C. Cir. May 3, 2002).

Given BellSouth's acknowledgement on rebuttal that CLECs need only demonstrate geographic comparability to receive the tandem interconnection rate, there now appears to be no disagreement regarding the applicability of said rate. We note, however, that this issue may not be as moot as BellSouth suggests in light of the D.C. Circuit Court of Appeal's recent remand of the FCC's *Local Competition Order on Remand and Report and Order* establishing the intercarrier compensation regime which BellSouth opted into.⁹⁰⁰ At present, however, we find BellSouth's position with respect to reciprocal compensation appropriate. We accordingly find that BellSouth is compliant with Checklist Item 13 in all respects.

IT IS SO ORDERED BY THE COMMISSION.

15. Checklist Item 14: Telecommunications Services are Available for Resale in Accordance with the Requirements of §251(c)(4) and 252(d)(3).

(a) The Requirements of the Act

BOCs are required, pursuant to §271(c)(2)(B)(xiv), to make their "telecommunications services available for resale in accordance with the requirements of §251(c)(4) and 252(d)(3)." Section 251(c)(4) specifies that it is the duty of incumbent LECs to offer telecommunications services for resale at wholesale rates and not to prohibit or impose unreasonable or discriminatory conditions or limitations on such resale services, except that a state commission can prohibit a reseller from offering a resold service that is available only to a specific category of subscribers to a different category of subscribers. The pricing standards for resold services are prescribed in §252(d)(3) which specifies that wholesale rates are determined on the basis of retail rates excluding that portion of marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

(b) The *Prima Facie* Position of BellSouth

BellSouth asserts that the evidence submitted throughout this proceeding establishes that it allows CLECs to resell its retail telecommunications services on a nondiscriminatory basis. In particular, BellSouth maintains that its performance data demonstrate that it provides services for resale to CLECs in Alabama in substantially the same time and manner as for its retail customers. Moreover, BellSouth notes that

⁹⁰⁰ *Id.*

as of March 31, 2001, 211,785 units were being resold by CLECs in Alabama while 3,002,701 units were being resold throughout BellSouth's region.⁹⁰¹

(c) The Position of SECCA

SECCA asserts that BellSouth has offered no evidence of its ability to support the resale of advanced services even though it provides such service directly to its end users on a retail basis. SECCA maintains that unless and until BellSouth provides such evidence, it has not satisfied Checklist Item xiv.⁹⁰²

According to SECCA, the D.C. Circuit Court of Appeals ruled in *Association of Communications Enterprises v. FCC* that advanced services such as XDSL which BOCs provide to their end users on a retail basis must be made available to CLECs at a wholesale discount.⁹⁰³ SECCA maintains that what BellSouth has attempted to do is to label its services as "wholesale" and thereby hope to prevent their resale to CLECs.

SECCA specifically argues that BellSouth does not provide DSL services to its own end users through an affiliated ISP, but instead provides such services directly to its retail end users as FastAccess® service. SECCA maintains that such a conclusion is clear after a review of BellSouth's publicly available marketing materials. In particular, SECCA contends that BellSouth owns, operates, and maintains the access line, the D-SLAM, the packet transport facilities and the ATM switching facilities for FastAccess®. SECCA further contends that BellSouth markets, advertises, and bills for FastAccess® in one invoice that includes residential telephone service. SECCA also notes that BellSouth bills end users for monthly service "DSL" charges separate from, and in addition to, charging for the use of interLATA ISP service.⁹⁰⁴

SECCA further contends that BellSouth provides customer service support for, and offers price packages that combine, its bundled local and intraLATA product CompleteChoice® with FastAccess® service. Through such service, which it sells alongside other services, SECCA asserts that BellSouth is rapidly deploying DSL throughout Alabama.

SECCA points out that the court in *Ascent I* held that "Congress did not treat advanced services different from other telecommunications services" with respect to the

⁹⁰¹ *Id.* at p. 126 [Citing Tr. p. 1346 (*Milner*)].

⁹⁰² SECCA Post Hearing Brief at p. 11.

⁹⁰³ SECCA Post Hearing Brief at pp. 11-12; *Association of Communications Enterprises v. FCC*, 235 F.3d 662 (D.C. Cir. 2001) ("*Ascent I*") *aff'd* _____ F.3d. _____, No. 00-1144 (D.C. Cir. June 26, 2001).

resale obligations of §251(c)(4) of the Act.⁹⁰⁵ SECCA also notes that the court in *Ascent I* held that ILECs cannot avoid their resale obligations with respect to advanced services by offering such services through a wholly owned affiliate.⁹⁰⁶ SECCA further contends that the FCC, in its *Verizon Connecticut Order*, required Verizon to allow a CLEC to resell DSL service over lines on which Verizon provides the voice service, or on which the CLEC resells Verizon's voice service, even though the DSL service is provided exclusively by Verizon's advanced services affiliate.⁹⁰⁷

Since it is clear that BellSouth is providing advanced services such as XDSL directly to its end users, SECCA represents that BellSouth must be required to demonstrate that it complies with the obligation to provide advanced services on a resale basis, both currently and on a going forward basis. Alternatively, SECCA contends that BellSouth must more clearly document why it is not required to make advanced services available on a resale basis.

In conclusion, SECCA maintains that BellSouth does not properly support the resale of its DSL service even though it provides this service directly to its end users on a retail basis. SECCA maintains that this deficiency is evidence that BellSouth has not satisfied Checklist Item 14.⁹⁰⁸

(c) The Rebuttal Position of BellSouth

BellSouth contends that the Commission need not address SECCA's reliance on *Ascent I* due to recent action by the FCC. More particularly, BellSouth notes that in approving Southwestern Bell's recent application for §271 authority in Missouri and Arkansas, the FCC did not require Southwestern Bell to resell its wholesale XDSL service and announced that it will initiate a separate rulemaking proceeding to address the resale of XDSL services under §251(c)(4).⁹⁰⁹

BellSouth additionally maintains that SECCA's reliance on *Ascent I* is misplaced. More particularly, BellSouth contends that *Ascent I* arose from the 1998 merger

⁹⁰⁴ SECCA Post Hearing Brief at p. 12.

⁹⁰⁵ *Ascent I*.

⁹⁰⁶ *Id.*

⁹⁰⁷ SECCA Post Hearing Brief at pp. 11-12 [Citing *In the Matter of the Application of Verizon New York, Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Services, Inc., For Authorization to Provide In-Region, InterLATA Services in Connecticut*, CC Docket No. 01-100, Memorandum and Order, Rel. July 20, 2001, pp. 30-34 ("Verizon Connecticut Order")].

⁹⁰⁸ SECCA Post Hearing Brief at pp. 12-13.

between Ameritech and SBC. According to BellSouth, the FCC approved the merger and permitted the new company, Southwestern Bell, to offer advanced services through a wholly owned affiliate separated from the ILEC operations without provisioning advanced services at a wholesale discount. On appeal, BellSouth maintains that the court in *Ascent I* essentially ruled that the advanced services sold through the wholly-owned affiliate were “at retail” and held that an ILEC may not “sideslip §251(c)’s requirements by simply offering telecommunications services through a wholly owned affiliate.”⁹¹⁰

BellSouth maintains that unlike Southwestern Bell, it does not provide XDSL at retail through a wholly owned affiliate or otherwise. BellSouth instead contends that it only provides advanced services such as XDSL to telecommunications carriers and ISPs on a wholesale basis thus rendering §251(c)(4) inapplicable. BellSouth accordingly maintains that *Ascent I* does not support SECCA’s argument that BellSouth should be required to resell its advanced data services at a wholesale discount.

BellSouth also argues that SECCA’s reliance on *Ascent I* is misplaced because it ignores a subsequent decision involving the same parties before the same court.⁹¹¹ BellSouth maintains that an analysis of both *Ascent* decisions demonstrates that BellSouth does not have to provide advanced services such as XDSL at a discount in order to satisfy Checklist Item 14.

(d) The Determination of the Commission

BellSouth is correct in noting that the FCC, in approving Southwestern Bell’s recent application for §271 authority in Missouri and Arkansas, did not require Southwestern Bell to resell its XDSL service and announced that it would initiate a separate rulemaking proceeding to address the resale of XDSL services under §251(c)(4). The FCC indeed instituted a Notice of Proposed Rulemaking on February 14, 2002 entitled *In Re: Appropriate Framework for Broadband Access to the Internet Over Facilities; Universal Service Obligations of Broadband Providers*, CC Docket No. 02-33 (*Broadband NPRM*) to consider such issues. It therefore appears that even

⁹⁰⁹ BellSouth Post Hearing Brief at p. 128 [Citing *Separate Statements of Commissioners Abernathy, Cox and Martin, Joint Application of SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance pursuant to §271 of the Telecommunications Act of 1996 to provide In-Region InterLATA Services in Arkansas and Missouri*, Memorandum Opinion and Order, CC Docket No. 01-194, (Rel. Nov. 16, 2001) (“SWBT Arkansas/Missouri Order”).

⁹¹⁰ *Id.* at p. 129 [Citing *Ascent I* at p. 666].

⁹¹¹ *Id.* [Citing *Association of Communications Enterprises v. FCC*, 253 F.3d 29 (D.C. Cir. 2001) (“*Ascent II*”).

though there is great uncertainty regarding what constitutes “retail” DSL offerings which must be made available for resale pursuant to this checklist item, the FCC has concluded that this issue should not presently preclude 271 approval. Similarly, the FCC concluded in its *Georgia/Louisiana Order* that BellSouth’s position with respect to its DSL offerings should not be an impediment to 271 approval given the fact that the issues concerning the resale of DSL offerings will be considered in the *Broadband NPRM*.⁹¹²

Based on the FCC’s holdings concerning the issues discussed with respect to this checklist item, we conclude that such issues should not preclude 271 approval. We thus find BellSouth compliant with this checklist item. We will, however, closely follow the issues raised by SECCA in the proceedings before the FCC.

IT IS SO ORDERED BY THE COMMISSION.

C. BellSouth’s SGAT

Pursuant to §252(f)(1) of the Act, BellSouth has filed with the Commission a Statement of Generally Available Terms and Conditions (“SGAT”) which sets forth the terms and conditions which BellSouth generally offers in Alabama in compliance with its obligations under §251 of the Act.⁹¹³ Once approved, BellSouth’s SGAT will provide an avenue for competitive local exchange carriers to expeditiously enter the local market without having to engage in lengthy and burdensome interconnection negotiations with BellSouth.

In reviewing BellSouth’s SGAT, the Commission must determine that it complies with the requirements of §251 and the rules and regulations of the FCC promulgated thereunder. Additionally, the Commission must consider the requirements of §252(d) which establishes pricing standards for interconnection, unbundled network elements, the transport and termination of traffic and resale. We note, however, that all matters concerning the pricing of BellSouth’s interconnection services and unbundled network elements were reviewed and addressed by the Commission in its May 31, 2002, Order in Docket 27821, the Commission’s *Generic UNE Docket*.

⁹¹² *Georgia/Louisiana Order* at ¶277.

⁹¹³ BellSouth Exhibit 90 as revised on November 16, 2001. (“BellSouth’s Revised SGAT”)

Based on the record compiled in this proceeding, we determine that BellSouth's revised SGAT should be approved. We find said SGAT compliant with the requirements of §251 and the rules and regulations of the FCC promulgated thereunder.

IT IS SO ORDERED BY THE COMMISSION.

D. BellSouth's Self-Effectuating Enforcement Mechanism Plan

Upon BellSouth's approval to provide In-Region InterLATA services in Alabama, the focus of this Commission will shift to the monitoring and oversight of BellSouth's operations to ensure that the local market remains open to competition. It will be incumbent upon the Commission to ensure that BellSouth does not backslide with regard to the measures it has been required to implement in order to initially demonstrate that its markets are indeed open to competition.

We have extensively reviewed the Self-Effectuating Enforcement Mechanism ("SEEM") plan proposed by BellSouth in this proceeding as well as the plan put forward by AT&T and WorldCom. While both plans have merit, we, at this juncture, adopt on an interim basis the SEEM plan as currently approved by the Georgia Public Service Commission.⁹¹⁴ This is the plan which will best work in conjunction with the Georgia SQM format which was also adopted herein on an interim basis to monitor BellSouth's performance beyond these proceedings.

Our decision to adopt the Georgia SEEM plan on an interim basis is heavily influenced by the FCC's endorsement of said plan in its *Georgia/Louisiana Order*.⁹¹⁵ In particular, we are persuaded by the FCC's conclusion that the Georgia SEEM plan provides sufficient incentives to foster post-entry checklist compliance by BellSouth.⁹¹⁶

In order to minimize the possibility of inappropriate behavior while BellSouth's In-Region InterLATA Petition for Alabama is pending with the FCC, we find that the Georgia SEEM plan adopted herein on an interim basis should be implemented effective August 1, 2002. We will, however, review our decision to adopt the Georgia SEEM plan on an interim basis when we conduct our proceeding to determine an appropriate permanent SQM for Alabama. As stated in our May 30, 2002 Notice of Decision in this matter, we will investigate in the aforementioned proceedings the merits

⁹¹⁴ We specifically note that the Service Order Accuracy Measures/Penalties implemented as part of BellSouth's 271 application for Georgia and Louisiana must be included in said plan.

⁹¹⁵ *Georgia/Louisiana Order* at ¶¶291-300.

⁹¹⁶ *Georgia/Louisiana Order* at ¶293.

of permanently adopting for Alabama the SQM and enforcement mechanism recently adopted by the Florida Public Service Commission pursuant to its order number PSC-02-0187-FOF-TP entered on February 12, 2002 in its Docket 000121-TP and amended pursuant to order number PSC-02-0187A-FOF-TP entered on March 13, 2002.

E. The CLEC Petition for Structural Separation

SECCA contends that the best way to ensure that there are no conflicts of interest between BellSouth's wholesale and retail operations is to require BellSouth to structurally separate its wholesale and retail sides. The CLECs contend that structural separation will minimize the anti-competitive conduct that prevents CLEC market entry and will result in a more level playing field for the CLECs.

SECCA put forth numerous allegations in support of its request for structural separation through the testimony of Mr. Tom Allen of Covad.⁹¹⁷ However, none of the allegations raised by SECCA, either individually or collectively, demonstrate anticompetitive behavior on BellSouth's part which is substantial enough to justify the imposition of structural separation.

BellSouth vehemently objects to structural separation both on factual and jurisdictional grounds and moved for the dismissal of the SECCA Petition for Structural Separation. Because the allegations raised in support of SECCA's Petition for Structural Separation do not appear to justify such action, however, we see no need to analyze, much less reach a conclusion on, the jurisdictional arguments raised by BellSouth. We accordingly deny the SECCA Petition for the Structural Separation of BellSouth on factual grounds.⁹¹⁸

⁹¹⁷ Tr. pp. 5353-5421 ("Allen").

⁹¹⁸ We note that the Commission is currently considering the establishment of rules and guidelines governing the marketing practices of BellSouth and CLECs in Joint Dockets 15957, 27989 and 28126; *In re: BellSouth "Full Circle" Promotion and Generic Proceeding Considering the Promulgation of Telephone Rules Governing Promotions; BellSouth "Key Customer" Program*.

F. Summary of Conclusions and Findings

As noted in the foregoing sections, the Commission finds that BellSouth has satisfied its obligations under §271(c)(1)(A) [“Track A”] of the Telecommunications Act of 1996 (the “Act”) as well as the requirements of the “Competitive Checklist” found at §271(c)(2)(B)(i)-(xiv) of the Act. The Commission additionally concludes that: (1) BellSouth’s Revised SGAT should be approved⁹¹⁹; (2) The Interim SQM is adopted for purposes of assessing BellSouth’s §271 compliance; (3) The SQM and the SEEM plan currently approved and utilized by the Georgia Public Service Commission should be adopted on an interim basis for purposes of monitoring BellSouth’s performance beyond this proceeding.⁹²⁰ However, the Commission shall, on or before November 30, 2002, establish a separate proceeding to determine the merits of permanently adopting for Alabama the SQM and enforcement mechanism recently adopted by the Florida Public Service Commission pursuant to its order number PSC-02-0187-FOF-TP entered on February 12, 2002, in its Docket 000121-TP and amended pursuant to order number PSC-02-0187A-FOF-TP entered on March 13, 2002; and (4) The request of the Southeastern Competitive Carriers’ Association (“SECCA”) for the structural separation of BellSouth is denied.

IT IS SO ORDERED BY THE COMMISSION.

⁹¹⁹ As submitted on November 16, 2001; BellSouth shall be required to submit prices for said SGAT which correspond to those established in the Commission’s final Order in Docket 27821, *In Re: Generic Proceeding to Establish Prices for Interconnection Services and Unbundled Network Elements*; UNE combinations shall also be provided and priced pursuant to the provisions of the Commission’s final Order in Docket 27821.

⁹²⁰ The SEEM plan shall include all Service Order Accuracy performance measures/penalties implemented following the conclusion of the proceedings held in this cause.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DONE at Montgomery, Alabama, this day of July, 2002.

ALABAMA PUBLIC SERVICE COMMISSION

Jim Sullivan, President

Jan Cook, Commissioner

George C. Wallace, Jr., Commissioner

ATTEST: A True Copy

Walter L. Thomas, Jr., Secretary